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NO. 2122

United States

Circuit Court of Appeals

For the Ninth Circuit.

H. K. LOVE, U. S. MARSHAL,

Plaintiff in Error,

vs.

VASO PAVLOVICH,

Defendant in Error.

Transcript of Record.

Upon Writ of Error from United States District Court of the Territory of Alaska, Fourth Division.

Press of Fairbanks Times, Fairbanks, Alaska

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H. K. LOVE, U. S. MARSHAL,

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Transcript of Record.

Upon Writ of Error from United States District Court of the Territory of Alaska, Fourth Division.

Due service and receipt of three copies hereof admitted this.....22nd.....day of April, 1914.

H. A. Day & Morton E. Stevens

Attorneys for Defendant in Error.

Dame a
876

878

INDEX.

Index. Page

Index. Page

Index. Page

Names and Addresses of Attorneys of Record.

H. A. DAY and M. E. STEVENS, Attorneys for Plaintiff and Defendant in Error, Fairbanks, Alaska.

McGOWAN & CLARK, Attorneys for Defendant and Plaintiff in Error, Fairbanks, Alaska.

In the District Court for the Fourth Division of the Territory of Alaska.

No. 1785.

VASO PAVLOVICH,

Plaintiff,

vs.

H. K. LOVE,

Defendant.

[Title of Court and Cause.]

Stipulation Relative to Printing Record.

IT IS HEREBY STIPULATED that in printing the papers and records to be used on the hearing of the writ of error in the above entitled cause, for the consideration of the United States Circuit Court of Appeals for the Ninth Circuit, the title of the court and cause in full in all papers shall be omitted, except on the first page of said record, and that there shall be inserted in place of said title, the words "Title of court and cause"; also that the indorsements on all papers, except the Clerk's filing marks, and admissions of service need not be printed; and also that the verifications of all pleadings may be

omitted and the words "duly verified" inserted in place thereof.

Fairbanks, Alaska, March 23, 1914.

MORTON E. STEVENS, H. A. DAY,
Attorneys for Plaintiff.

McGOWAN & CLARK,
Attorneys for Defendant.

(Indorsed) Filed in the District Court, Territory of Alaska, 4th Div., Mar. 23, 1914. Angus McBride, Clerk.

[Title of Court and Cause.]

Amended Complaint.

Comes now the said plaintiff and filing this his amended complaint by leave of Court, complains of said defendant, and for cause of action alleges:

I.—That during all the times hereinafter mentioned said defendant was the United States Marshal for the Fourth Division of the Territory of Alaska.

II.—That heretofore, to-wit, on the 24th day of May, 1912, and for a long time prior thereto, said plaintiff was the owner and in the actual possession, and entitled to possession and is still the owner and entitled to the possession of one hundred and ninety-three cords of 4 foot birch wood on Discovery claim on Chatanika Flats, in Fairbanks Precinct, Alaska, which said wood was on said 24th day of May, 1912, worth the sum of twelve dollars per cord, amounting to the sum of twenty-three hundred and sixteen ($2,316.00) dollars.

III.—That on said 24th day of May, 1912, said de-

fendant as such United States Marshal unlawfully took said wood from the possession of said plaintiff and converted the same to his own use, to the damage of said plaintiff in the sum of twenty-three hundred and sixteen ($2316.00) dollars.

WHEREFORE, said plaintiff prays judgment in his favor and against said defendant for the sum of twenty-three hundred and sixteen ($2316.00) dollars and costs of suit.

H. A. DAY,
Attorney for Plaintiff.

(Duly Verified)

Service by copy accepted this 14th day of Dec., 1912.

Verification waived until day of trial.

McGOWAN & CLARK,
Attys. for Deft.

(Indorsed) Filed in the District Court, Territory of Alaska, 4th Div., Dec. 17, 1912. C. C. Page, Clerk. By P. R. Wagner, Deputy.

[Title of Court and Cause.]

Answer.

Now comes the defendant in the above entitled action and answering plaintiff's amended complaint on file herein admits, denies, and avers as follows:

I.

(a) Admits the matters and allegations set forth in paragraph one of plaintiff's said amended complaint.

(b) Denies generally the matters and allegations set forth in paragraphs two and three of said amended complaint.

II.

For a further and separate answer and defense to plaintiff's said amended complaint, defendant alleges as follows:

(a) That, during all the times herein mentioned, this defendant was, and still is, the duly appointed, qualified and acting United States Marshal in and for the Fourth Judicial Division of the Territory of Alaska.

(b) That, on or about the 17th day of May, 1912, an action was duly commenced, in the Commissioner's Court in and for Fairbanks Precinct, Fourth Judicial Division, Territory of Alaska, at Chatanika, by one Paul Ringseth, against Sam Vlik & Company, a copartnership, to recover the sum of $1,000.00, alleged to be due on an express contract for the payment of money, to wit, a balance due on an open account for goods, wares, and merchandise, sold and delivered.

(c) That, on said date, a summons in due form was regularly issued in the action aforesaid, and, on the same date, was duly and regularly served on the defendants in said action, by the defendant herein, in his capacity as United States Marshal aforesaid, by delivering to Dan Vlik, a member of said copartnership of Vlik & Company, personally, a true copy of said summons, to which was attached a copy of the complaint filed in said action, duly certified as required by law, and which service was made at Chatanika, Alaska, and within the jurisdiction of said Commissioner's Court.

(d) That, on the date aforesaid and after the issuance of the summons aforesaid, a writ of attachment was duly issued, given, and made by the said Commissioner's Court, in the last named action, and placed in the hands of defendant herein, as United States Marshal aforesaid, and that, by virtue of said writ of attachment, defendant herein did, in his capacity aforesaid, on said 17th day of May 1912, serve and execute the said writ of attachment, by delivering a true copy thereof, duly certified, to Dan Vlik, a member of said copartnership defendant, and by levying on and seizing all the right, title, and interest of the said defendants in, to, and out of one certain lot of wood, situate near the boiler-house on Discovery Claim, Chatanika River, the said wood being a part of the wood mentioned in plaintiff's complaint herein, and which said wood was, at the time of the seizure aforesaid, in the possession of the defendant Sam Vlik & Company, in the action hereinbefore mentioned.

(e) That, thereafter, such proceedings were had in the action last aforesaid, before the said Commissioner's Court at Chatanika aforesaid, that, on the 24th day of May 1912, a judgment was duly given, made, and entered by said Court, in said action, in favor of said Paul Ringseth, the plaintiff therein, and against said defendants Sam Vlik & Company, for the sum of $1000.00, together with interest at the rate of 8 per cent per annum until paid, and costs taxed at $18.70.

(f) That, thereafter and on said 24th day of May

1912, an exectuion in due form was regularly given and made by said Commessioner's Court, in the aforesaid action, which execution was, on the 25th day of May 1912, placed in the hands of this defendant, in his capacity as United States Marshal aforesaid, for execution.

(g) That this defendant, in his said capacity as United States Marshal, as aforesaid, by virtue of said execution, did, on said 25th day of May 1912, duly levy on all the right, title, and interest of said Sam Vlik & Company, defendants named therein, in, to, and out of one hundred cords more or less of 4-foot birch wood, situate on Discovery Claim, Chatanika Flats, being the wood hereinbefore mentioned, and being part of the wood mentioned in plaintiff's amended complaint, the said wood then being in the possession of this defendant, in his capacity as United States Marshal aforesaid, under and by virtue of the writ of attachment hereinbefore alleged, by seizing and taking into his possession the said wood, together with other personal property adjacent thereto, and posting notices of Marshal's sale in three public places, as required by law, to wit, one on said wood at the place aforesaid, a second on a post near the Grand Hotel in Chatanika, and a third on the door of the postoffice at Cleary, the last named two places being within 5 miles distant from said property, and which said notices provided that the said wood should be sold by defendant herein, in his capacity as United States Marshal aforesaid, at a sale to be held at the place where said wood was

situate, on said Discovery claim, on the 6th day of June 1912.

(h) That this defendant, after posting the notices aforesaid, caused said wood to be measured, and found the exact number of cords of said wood, so levied on and attached as aforesaid, to be 123 cords of 4-foot birch wood.

(i) That this defendant, on said 25th day of May 1912, duly advertised all said wood for sale, by posting notices in the manner aforesaid, which notices provided that the said property would be sold on the 6th day of June 1912, at the hour of 2:00 p. m., at the boiler-house on the Sam Vlik & Company, lease on Discovery Claim aforesaid, and that, on said 6th day of June 1912, between the hours of 2:00 and 3:00 p. m., at the place aforesaid, this defendant, in his capacity as United States Marshal aforesaid, under and by virtue of the execution aforesaid, exposed for sale at public auction, and did sell at public auction, to the highest and best bidder for cash, all the right, title, and interest of said defendants, Sam Vlik & Company, in, to, and out of said 123 cords of 4-foot birch wood, for the sum of $1,076.25, said sale being at the rate of $8.75 for each and every cord of said wood so sold, which said sum, less the sum deducted by defendant herein for his fees as United States Marshal aforesaid in connection with the levies aforesaid, was credited and applied in satisfaction of the execution and judgment aforesaid.

(j) That, as this defendant is informed and believes and so alleges, at the time of the levy of the

writ of attachment hereinabove mentioned, the said wood, so levied on and sold by him as aforesaid, was in the exclusive possession of Sam Vlik & Company, the defendants in the action hereinbefore mentioned, and that said Sam Vlik & Company were in possession of the said wood and were the owners thereof at all the times hereinbefore mentioned.

III.

For a further, separate, and second answer and defense to plaintiff's said amended complaint, defendant alleges as follows:

(a) That, during all the times herein mentioned, this defendant was, and now is, the duly appointed, qualified, and acting United States Marshal in and for the Fourth Judicial Division of the Territory of Alaska.

(b) That, on or about the 17th day of May 1912, an action was duly commenced, in the Commissioner's Court in and for the Fairbanks Precinct, Fourth Judicial Division, Territory of Alaska, at Chatanika, by one Jack McLean, against Sam Vlik & Company, a copartnership, to recover the sum of $1000.00, alleged to be due on an express contract for the payment of money, to wit; a balance due for wages and for moneys advanced and paid out for defendants.

(c) That, on the 18th day of May 1912, a summons in due form was regularly issued in the action aforesaid, and, on the same date, was duly and regularly served on the defendants in said action, by the defendant herein, in his capacity as United States Marshal aforesaid, by delivering to Dan Vlik, a a mem-

ber of the copartnership of Sam Vlik & Company, personally, a true copy of said summons, to which was attached a copy of the complaint filed in said action, duly certified as required by law, and which service was made at Chatanika, Alaska, and within the jurisdiction of said Commissioner's Court.

(d) That, on the date aforesaid and after the issuance of the summons aforesaid, a writ of attachment was duly issued, given, and made, by the said Commissioner's Court, in the last named action, and placed in the hands of defendant herein, in his capacity aforesaid, on said 18th day of May 1912, and that, by virtue of said writ of attachment, defendant herein did, in his capacity aforesaid, on said date, serve and execute the said writ of attachment, by delivering a true copy thereof, duly certified, to Dan Vlik, a member of the said copartnership defendant, and by levying on and seizing all the right, title, and interest of the said defendants in, to, and out of one lot of wood and provisions, situate on Discovery Claim, Chatanika River, the said wood being a part of the wood mentioned in plaintiff's complaint herein, and which said wood was, at the time of the seizure aforesaid, in the possession of the defendants Sam Vlik & Company, in the action hereinbefore last mentioned.

(e) That thereafter such proceedings were had in the action last aforesaid, before the said Commissioner's Court at Chatanika aforesaid, that, on the 24th day of May 1912, a judgment was duly given, made, and entered by said Court, in said action, in favor

of said Jack McLean, the plaintiff therein, and against the defendants Sam Vlik & Company, for the sum of $1,000.00, together with interest at the rate of 8 per cent per annum until paid, and costs taxed at $18.70.

(f) That, thereafter and on the 11th day of June 1912, an execution in due form was regularly given and made by said Commissioner's Court, in the aforesaid action, which said execution was, on the 12th day of June 1912, placed in the hands of this defendant, in his capacity as United States Marshal aforesaid, for execution.

(g) That this defendant, in his capacity as United States Marshal, as aforesaid, by virtue of said execution, did, on the 14th day of June 1912, duly levy on all the right, title, and interest of said Sam Vlik & Company, defendants named therein, in, to, and out of forty cords more or less of birch and spruce wood, one large tent, one cooking stove, all cooking utensils, provisions, etc., belonging to said defendants, being the wood hereinbefore mentioned and being part of the wood mentioned in plaintiff's amended complaint, the said wood and other property above mentioned being then in the possession of this defendant, in his capacity as United States Marshal, as aforesaid, under and by virtue of the writ of attachment hereinbefore alleged, by seizing and taking into his possession the said wood and other personal property aforesaid, and by posting notices of Marshal's sale in three public places, as required by law, to wit, one on the boiler-house on the Sam Vlik and Company lease on said Discovery claim, a second

at the town of Chatanika, and a third at the post-office at Cleary, the last named two places being within five miles distant from said property, which said notices provided that the said property should be sold by defendant herein, in his capacity as said United States Marshal aforesaid, at a sale to be held at the place where said property was situate, on said Discovery claim, on the 25th day of June 1912.

(h) That this defendant, after posting the notices aforesaid, caused said wood to be measured, and found the exact number of cords of said wood, so levied on and attached as aforesaid, to be 40 cords of birch and spruce wood.

(i) That this defendant, on said 12th day of June 1912, duly advertised said wood for sale, by posting notices in the manner aforesaid, which notices provided that the said property would be sold on the 25th day of June 1912, at the hour of 2:00 p. m., at the boiler-house on the Sam Vlik & Company lease on Discovery Claim aforesaid, and that, on said 25th day of June 1912, between the hours of 2:00 and 3:00 p. m., at the place aforesaid, this defendant, in his capacity as United States Marshal aforesaid, under and by virtue of the execution aforesaid, exposed for sale at public auction, and did sell at public auction, to the highest and best bidder for cash, all the right, title, and interest of said defendants, Sam Vlik & Company, in, to, and out of said 40 cords fo birch and spruce wood and the other personal property aforesaid, for the sum of $275.00, which said sum, less the sum deducted by defendant herein for

his fees as United States Marshal in connection with said levies, was credited and applied on said execution and judgment aforesaid.

(j) That, as this defendant is informed and believes and so alleges, at the time of the levy of the writ of attachment hereinbefore mentioned, the said wood and other personal property, so levied on and sold by him as aforesaid, was in the exclusive possession of said Sam Vlik & Company, the defendants in the action hereinabove mentioned, and that said Sam Vlik & Company were in the possession of the same and were the owners thereof at all the times hereinbefore mentioned.

IV.

For a further, separate, and third answer and defense to plaintiff's said amended complaint, defendant alleges as follows:

(a) That, under and by virtue of the attachments and executions in the cases of Paul Ringseth against Sam Vlik & Company and Jack McLean against Sam Vlik & Company, he seized, took into his possession, and sold, one hundred sixty three cords of four foot wood on Discovery Claim, Chatanika River, and no more.

V.

For a further, separate, and fourth answer and defense to plaintiff's said amended complaint, defendant alleges as follows:

(a) That, as defendant is informed and believes and so alleges, the plaintiff herein, long prior to the 17th day of May 1912, sold to said Sam Vlik & Com-

pany, and delivered to them on Discovery Claim aforesaid, a large number of cords of four-foot birch wood, and the said Sam Vlik & Company, for a long time prior to said 17th day of May 1912, were in the actual possession and were the owners of all said wood so delivered to them by plaintiff herein, and that the 163 cords of wood levied on and sold by defendant herein, under the process in this answer above set forth, was a part and parcel of the wood so sold and delivered by said plaintiff to said firm of Sam Vlik & Company.

(b) That, on or about the 18th day of May 1912, the said Sam Vlik & Company, being a copartnership composed of Sam Vlik, Dan Vlik, and Mike Onok, doing business under the firm name and style of Sam Vlik & Company aforesaid, were indebted to said Paul Ringseth and to said Jack McLean, as well as to numerous other persons, in large sums of money and were insolvent, and that, prior to the said date, to wit, on the 17th day of May 1912, the said Paul Ringest and the said Jack McLean had commenced actions at law against the said Sam Vlik & Company, for the recovery of the amounts due to them, as in this answer above more fully appears.

(c) That, as this defendant is informed and believes and so alleges, on or about the 18th day of May 1912, the said Sam Vlik & Company, with intent to hinder, delay, and defraud their creditors, and particularly the said Paul Ringseth and the said Jack McLean, the plaintiffs in the actions hereinbefore alleged, made and executed a certain conveyance or

bill of sale, wherein and whereby they attempted to grant, bargain, sell, and convey unto the plaintiff herein, 210 cords of four-foot birch wood, situate on Discovery Claim, Chatanika Flats, for the fictitious consideration of two thousand dollars, with the design thereby to defraud of their lawful debts and demands the said Paul Ringseth and the said Jack McLean, as well as sundry other creditors of said Sam Vlik & Company, and other persons to whom they were indebted.

(d) That, as this defendant is informed and believes and so alleges, the 163 cords of wood so sold by this defendant, in the manner aforesaid, was part and parcel of the wood mentioned and described in said conveyance and bill of sale, and said wood was, at the time of said pretended conveyance and bill of sale, in the possession of and owned by said Sam Vlik & Company.

(e) That, as defendant is informed and believes and so alleges, the consideration of two thousand dollars named in said conveyance and bill of sale was fictitious, and the said plaintiff did not, at the time of the execution of said pretended conveyance and bill of sale, pay to the said Sam Vlik & Company the sum of two thousand dollars, lawful money of the United States of America, or any other sum or sums of money whatsoever, and the said pretended conveyance and bill of sale so made and executed was wholly without consideration, and was made and executed by said Sam Vlik & Company to said plaintiff, and was accepted by said plaintiff, for the

sole purpose and design of hindering, delaying, and defrauding the creditors of the said Sam Vlik & Company hereinabove mentioned, of their lawful suits, damages, debts, and demands.

(f) That, as defendant is informed and believes and so alleges, at the time of the making of said alleged bill of sale and conveyance, as aforesaid, the plaintiff did not enter into the possession of the said wood or any part thereof, nor has he, at any time since he sold and delivered the wood hereinbefore mentioned to said Sam Vlik & Company, been in the possession, actual or otherwise, of the said wood or any part or portion thereof.

(g) That, as defendant is informed and believes and so alleges, during all the times mentioned in plaintiff's complaint and for a long time prior thereto, all the wood and other chattels seized by the defendant herein, under and by virtue of the process hereinabove alleged, was owned by and in the possession of the said copartnership of Sam Vlik & Company hereinbefore mentioned.

WHEREFORE, defendant prays hence to be dismissed with judgment in his favor for his costs.

McGOWAN & CLARK
Attorneys for Defendant.

(Duly Verified.)

Due service hereof admitted this 9 day Jan. 1913.

H. A. DAY,
Attorney for Plf.

(Indorsed) Filed in the District Court, Territory of Alaska, 4th Div., Jan. 9, 1913. C. C. Page, Clerk. By P. R. Wagner, Deputy.

[Title of Court and Cause.]

Third Amanded Reply.

Comes now the plaintiff and by leave of Court files this his third amended reply to defendants answer herein.

Referring to the first separate answer and defense of defendant's answer:

I.—Plaintiff denies the seizure set forth in paragraph D, except **as to the three cords of wood.**

II.—Plaintiff denies each and every allegation contained in paragraphs E. F. G. H and J.

As to defendant's second answer and defense:

III.—Referring to paragraph D. plaintiff denies each and every allegation therein, except as to issuance of attachment and seizure of three cords of wood.

IV.—Referring to paragraphs E. and F. in said second separate answer, plaintiff denies each and every allegation therein contained.

V.—Plaintiff denies each and every allegation contained in subdivisions G. H. I and J of said second affirmative defense, saving and excepting that plaintiff admits that the defendant in his capacity as United States Marshal did, under a pretended seizure inder an alleged execution, on or about the 25th of June, 1912, sell certain wood, the same being a part of the wood described in plaintiff's complaint.

Referring to defendant's further, separate and third answer and defense to plaintiff's amended complaint herein, plaintiff says:

VI.—That he denies each and every allegation con-

tained in subdivision A of said third affirmative defense, and alleges that the number of cords of wood wrongfully sold by defendant is one hundred and ninety three cords.

Replying to the fourth separate answer and defense in said answer, plaintiff;

VII.—Referring to paragraphs C. E. F. and G plaintiff denies each and every allegation contained therein.

WHEREFORE plaintiff prays judgment as in said complaint prayed for.

H. A. DAY,

(Duly verified) Attorneys for Plaintiff.

Service of the foregoing 3rd reply admitted and a true copy thereof received this 25th day of April, 1913.

McGOWAN & CLARK,

Attorney for Deft.

(Indorsed) Filed in the District Court, Territory of Alaska, 4th Div., Apr. 25, 1913. C. C. Page, Clerk. By P. R. Wagner, Deputy.

[Title of Court and Cause.]

Notice.

Comes now the defendant, and, within the time allowed by law and the orders of this Court, presents his proposed bill of exceptions in the above entitled action for settlement and allowance, a copy of which is served herewith.

Fairbanks, Alaska, 16 October 1913.

McGOWAN & CLARK,

Attorneys for Defendant.

Due service hereof admitted this Oct. 16, 1913.
H. A. DAY, M. E. STEVENS,
Attorneys for Plff.

[Title of Court and Cause.]

Defendant's Bill of Exceptions.

Be it remembered that this case came on regularly for trial, on the 25th day of April 1913, before Honorable Frederic E. Fuller, Judge, sitting with a Jury duly impaneled and sworn to try the case, the plaintiff appearing in person and by his attorneys, Morton E. Stevens, esquire, and H. A. Day, esquire, and the defendant appearing by his attorneys, Messrs McGowan & Clark, whereupon the following proceedings were had and testimony was taken:

Mr Stevens made his opening statement in behalf of plaintiff;

Mr Clark made his opening statement in behalf of defendant.

At the request of the plaintiff, and both parties consenting, Tony Buttervich was sworn to interpret truly from the Slavonian language into the English language and from the English language into the Slavonian language.

VASO PAVLOVICH, the plaintiff, was called and sworn as a witness in behalf of plaintiff and testified through the interpreter in substance as follows:

DIRECT EXAMINATION.

It was admitted by both parties that the property in controversy, to wit, the wood described in

the plaintiff's complaint, was the property of Sam Vlik & Company on 17 May 1912, at the time the defendant claims it was first attached.

(The Witness): I am the plaintiff in this case. In May 1912 I lived on Little Eldorado and Olness. In May 1912 and for some time prior thereto I was a woodcutter and wood dealer, I was cutting wood.

It was here admitted that, in May 1912, the witness knew the firm known as Sam Vlik & Company, operators on Discovery claim on Chatanika Flats.

(Witness): Prior to the 17th day of May 1912, and on the 1st day of February 1912, I sold the wood that is in controversy in this case to Sam Vlik & Company; I sold them 252 cords at the price of $4.00 per cord. At that time the wood was located above hill from where I was cutting; it was not located on Discovery Flats, Chatanika, at that time. This wood was all together in one pile and was situate about four miles from Discovery claim on Chatanika.

Q. (Mr. Stevens): What does he mean by "It was all together," that it was all together on Discovery claim on Chatanika, or all together in the woods, or scattered in the woods. Find that out.

A. It was scattered all around, two and three cords at a time in places.

Q. In the woods?

A. Yes sir.

Q. Now, he stated that he sold that wood to Sam Vlik & Co. in February. Did Sam Vlik & Co. pay you anything in February, or at any other time up to

the time you got this bill of sale?

A. None at all, sir.

Q. Ask him whether or not Sam Vlik & Co. gave him promissory notes, promising to pay for this wood.

A. Yes sir.

Q. Did you at any time prior to the 18th day of May 1912, furnish to Sam Vlik & Co. any horse feed?

Ex. 1. (Mr. McGowan): We object as irrelevant, immaterial, and incompetent, not bearing upon any issue in this case.

(Mr. Stevens). It shows the consideration for this transfer.

(Mr. McGowan): There is no transfer before the Court.

(Mr. Stevens): We expect to introduce the bill of sale from Sam Vlik & Co.

(The Court): Objection overruled, under your statement.

(Defendant excepts; exception allowed).

A. Yes, sir, he did.

Q. (Mr. Stevens): Get him state about the time, as near as he can.

A. He gave him about four tons about the 1st of February, and one ton about the 1st of March.

(Witness): I paid the freight on that five tons of horse feed, from Fairbanks to Chatanika; I paid $80.00 for freight and $362.75 to the N. C. Co. for the feed. When I got this freight to Chatanika I gave it to Sam Vlik and Sam Vlik gave it to a teamster to haul this same wood. I gave Sam Vlik $110.00

to give to the teamster money to buy horse feed any place that he wanted. This was the same teamster that hauled this wood for Vlik & Co., that I sold to Vlik & Co.

Q. (Mr. Stevens): Ask him if Sam Vlik & Co. agreed to pay him back for this feed that he had furnished, and feed and money that he had paid.

Ex. 2. (Mr. McGowan): We object to that; it is hearsay, and Sam Vlik & Co. are the best witnesses to testify to that.

(The Court): Objection overruled.

(Defendant excepts; exception allowed.)

A. Yes sir, they did.

Q. (Mr. Stevens): Ask him now: Up to the time he took the bill of sale from Vlik & Co. on the 18th day of May, whether or not he ever got anything in the way of payment from Vlik & Co. for either this wood, or the supplies, or this money he paid.

A. Not one cent.

(Witness): Up to the time I took the bill of sale from Sam Vlik & Company, on the 18th day of May, I did not get anything in the way of payment from Vlik & Company, for either this wood or the supplies or this money I paid, not one cent. On the 18th day of May 1912 I was in Fairbanks, in company with Sam Vlik at the time Sam Vlik & Company made this bill of sale to me. I met Sam Vlik in Olness and he told me he could not pay me anything and he was willing to give me a bill of sale, and he came to Fairbanks with me. He and I went to the Commissioner's Court at Fairbanks, for the purpose of getting this

bill of sale made.

(Mr. Stevens produces bill of sale.)

(Witness): I remember this is the bill of sale that Sam Vlik gave me; it is the one that was made out by John Dillon, conveying 210 cords of wood, located on Discovery claim, from Vlik & Company to me; the consideration stated is $2000.00, which was money that was owed me, $2000.00 for wood, that Vlik & Company owed me. I recognize this as the bill of sale that I got.

(The bill of sale was here offered in evidence, read to the Jury, and received and marked "Plaintiffs Exhibit A", and is in the words and figures following:—)

PLAINTIFF'S EXHIBIT "A".

Know all men by these presents: That Sam Vlik and Co. a copartnership consisting of Sam Vlik, Dan Vlik, and Mike Onok, the party of the first part, for and in consideration of the sum of Two Thousand ($2000.00 Dollars lawful of the United States of America, to it in hand paid by Vaso Pavlovich the party of the second part, the receipt whereof is hereby acknowledged, does by these presents grant, bargain, sell and convey unto the said party of the second part, his executors, administrators and assigns two Hundred and ten cords of four foot birch wood, situate on Discovery claim on the Chatanika River between the mouths of Little Eldorado and Cleary Creeks, Fairbank Precinct Alaska To Have and to Hold the same to the said party of the second part, executors, administrators and assigns forever. And

it does for its heirs, executors and administrators. covenant and agre to and with the said party of the second part, his executors, administrators and assigns, to warrant and defend the sale of the said property, goods and chattels hereby made unto the said party of the second part, his executors, administrators and assigns, against all and every person and persons whomsoever lawfully claiming or to claim the same.

In Witness Whereof, it have hereunto set its hand and seal the 18 day of May in the year of our Lord one thousand nine hundred and twelve.

SAM VLIK & CO. (Seal)
By SAM VLIK (Seal)
One of the firm.

Signed, sealed and delivered in the presence of John F. Dillon, C. E. Wright.

United States of America, Territory of Alaska, ss.

This is to Certify That on this 18 day of May A. D. 1912 befoe me John F. Dillon a Notary Public in and for the Territory of Alaska, duly commissioned and sworn, personally came Sam Vlik, of the firm of Sam Vlik & Co to me known to be the individual described in and who executed the within instrument. and acknowledged to me that he signed and sealed the same as his free and voluntary act and deed for the uses and purposes therein mentioned. for and on behalf of Sam Vlick and Co. Witness my hand and official seal, the day and year in this certificate first above written.

(Notarial Seal) JOHN F. DILLON

Notary Public in and for the Territory of Alaska.

(Indorsed): Entered 36351 Indexed Compared Bill of Sale from Sam Vlik & Co to Vasco Pavlovich Dated May 18, 1912. United States of America, Territoy of Alaska Fairbanks Precinct Filed for record at request of Sam Vlik on the 18 day of May 1912 at 40 Minutes past 10 A. M. and recorded in volume 2 of Nills of Sale, page 94. Records of Fairbanks Precinct Territory of Alaska John F. Dillon.

(Witness): At the same time this bill of sale was made out, on the same day, Mr John Dillon made out some notices for me. He made six and I put up only four.

Q. (Mr. Stevens): Ask him to look at that (producing paper) and see whether or not that is one of the notices that John Dillon made out and gave to him on the same day that he made out the bill of sale.

A. He say he can't read but it looked like that same one.

Q. Ask him if that looks like the same one that he gave to his lawyer, judge Day.

A. Yes sir.

Q. Ask him how many notices of that kind did he post on this wood that is in dispute in this case.

Ex. 3. (Mr. Clark): We object on the ground that it is not shown this is a copy of the notices posted on the wood. He says he can not read and doesn't know, but it looks like it. It is not binding on the defendant.

(The Court): Objection overruled.

(Defendant excepts; exception allowed).

A. Four.

(Witness): I divided these notices on four corners, put one copy up on each corner. I put them up on the 18th day of May, about 7 o'clock in the evening, on the same day that Mr Dillon made them out. Mr Dillon made these notices at 10 o'clock in the morning and I left at some time in the afternoon on the train, but don't remember the hour. At 7 o'clock in the evening of May 18th when I posted these notices on this wood it was the same wood that I had already sold to Sam Vlik & Co. in February before.

(Mr. McGowan): We admit that the wood was on the claim that day, piled up there.

(Witness): This wood was all piled together, with the exception of 2 cords that they wee using on the claim, and that was about 20 feet distant from the wood that they were using for that purpose. This wood that I put the notices on was piled in nine tiers or ricks running right along together. The tiers were from 8 to 10 or 12 feet and 9 from the ground, but not less than 8 feet. There was only one tier that was a little bit shorter than the others, but the teamster put them together the same. Eight of these tiers were the same length and the other one a little shorter than the others in length. They measured this wood inside of two days and there was 193 cords. I used a stick, 8 feet long, as a method of measurement. I measured the stick with a rule to find whether it was 8 feet long. When I measued the wood there were three men with me to help me;

one fellow named T. Thomas, another is Peter Marcovich, but he has gone to the old country, to Albania, and I think M. Surack was there when it was measured. There was three and myself, making four. They are all here now, excepting Pete, who went to the old country. The wood was measured about the 20th of May and the measurement was 193 cords. The value of this wood to sell, that is the market value in May 18 or 20, 1912, located where it was located, was $12.00 a cord. It was birch and spruce wood, in 4 feet lengths and anything that was over 5 inches was all split. It was all ready to be used in the boiler for mining purposes. In addition to the 193 cords mentioned there was a small pile of two or three cords at one side; this was dry spruce; I didn't measure it exactly, but just from sizing it up. There was 15 or 16 or 17 ft. long in that small pile of spruce, and it is ordinarily referred to as 16 ft. wood. This wood was between 20 and 30 feet from the boiler house on the claim. I am just guessing at this. This wood was located close to the shaft, between the boiler house and the big pile of wood. On the 18th day of May 1912, when I went there and posted the 4 notices that John Dillon made out for me, there were 3 persons besides myself on the ground; there were Nick Sventovich, Ole Richards, and Theodore Thomas. Mr. Ringseth was not there, I didn't see him at all. Mr. Love, the marshal, was not there. There was no deputy marshal there; none at all. Mr. Lysle Brown, a deputy marshal, was not around there anywhere, I did not see anybody.

On the 18th day of May 1912, in the evening, when I posted these four notices on the corners of this big pile, there were no other notices posted on the wood besides the one I posted, none at all. I was present at the place where this wood was located on Discovery claim, Chatanika Flats, at the time Mr Carlson, the deputy marshal, made the sale. I was there when he sold the wood but I didn't know his name. It was this man here (pointing at M. O. Carlson, deputy marshal).

(It was here admitted that Mr Carlson was at that time a duly appointed and acting deputy marshal and made this sale under execution.)

(Witness): At the time the deputy marshal was about to make the sale of this wood, I went and got two men, —took them from their bobs, —took them with me, —took one man from his job and paid him wages, to explain to Mr Carlson, deputy marshal, that the wood belonged to me, because I could not talk English with him and he could not understand me. I hired two men, one I paid wages and the other I didn't pay nothing to. These two men were there at the time the sale was made; one of them was hired and the other was one of my partners. Peter Radovich was the one that interpreted for me to the marshal when I notified the marshal that it was my wood and not to sell it. I told Peter Radovich what to say to the marshal at the sale. I told him to tell Mr Carlson that the wood belonged to me; that if he sold it he has got to give me that money.

Q. Did Mr. Radovich, so far as he knows, speak to

the marshal and interpret it into English?

A. He say he did talk to him. He told him and he did talk and when he talked something he didn't know exactly—hear the word what what he said.

Q. There were two sales, as I understand. Was that at the first sale or the second sale; or does he know? Did he attend two sales, or one?

A. He says the first sale, and the second one he was not there at all.

Q. This was the first sale?

A. Yes, the first.

(Witness): This was on the 6th day of June. I don't know how much the marshal sold that wood for, nor how much the marshal got for it a cord. The marshal, the defendant in this case, never paid me for that wood that he took away from me and sold; I didn't get a cent.

(Counsel for plaintiff here offered in evidence one of the notices that Mr Dillon prepared and that plaintiff testified he posted on the wood, counsel stating that the plaintiff could not write and that the paper wasn't signed by him personally, but by his authority. Which paper was read to the jury and marked in evidence as "Plaintiffs Exhibit B", and is in the words and figures following:)

PLAINTIFFS EXHIBIT B.

"To all to whom it may concern: Notice is hereby given that I, the undersigned, am the owner of all the wood contained in this pile. And all persons are hereby warned not to take away or remove the same,

or any part thereof, from these premises, or to in any way interfere therewith. Dated this 18th day of May, A. D. 1912.

VASO PAVLOVICH, Owner."

(Witness): Sam Vlik wrote my name on that notice: I didn't know how to write and I asked him to sign my name for me. I don't write the English language.

CROSS EXAMINATION.

Q. (Mr. McGowan): What time did you meet Sam Vlik on the morning of the 18th?

A. He say he met him at Olness.

Q. What time in the morning?

A. He said he met him in daytime. He met him at night. He came at 11 o'clock at night in Barney Sandstrom's bunkhouse.

Q. That is Sam Vlik?

A. Yes.

Q. What did Sam Vlik tell him to do? Did he tell him to come to town with him?

A. He said he had no money to pay him for wood and he wanted to give him a bill of sale of wood.

(Witness): He didn't tell me at that time that an attachment had been put on his place, on the boiler house and on the wood. Nothing was said about the marshal or the commissioner out there having placed an attachment on the place or a suit being commenced. Nobody told me that at all. When I came to town with Sam Vlik I didn't know that this attachment had been put on. I came in from Olness with Sam Vlik on the train that leaves out there in

the morning. I don't recollect what time it was. When I came to Fairbanks Sam Vlik and myself went right to the commissioner's office. We didn't stop to have anything to eat or anything like that; went straight to the commissioner's office, and this paper, Plaintiff's Exhibit "A", was made out by Mr Dillon at that time.

Q. This paper says $2,000.00 was paid by you; did you pay anything like that?

A. He said that he owed him $2000.00.

Q. And that was all there was to it, the $2000.00 he owed him.

A. He say he owed him $1565.00 and 13 shifts for wages that he earned.

Q. That included wood and feed and wages. Is that right?

(Mr. Stevens): And freight.

(Mr. McGowan): And freight?

A. Yes sir.

Q. $1720.00?

A. Yes sir.

Q. Why didn't you put $1720.00 in this paper?

A. He says he didn't know that. He just put what he owed him. That is what he thought the wood was worth, $2,000.00.

Q. So that 210 cords of wood on the 18th day of May 1912, out on this same creek, was worth $2000.00, and that is why he put it in. Is that right?

A. He says it did if it was 210 cords, but he didn't measure it yet, on that account.

Q. But 210 cords on the 18th of May was worth

$2000.00 he thought? That is what I want to get at.

A. Yes sir.

Q. You testified a few minutes ago that the value of wood was $12.00 per cord on the 24th of May. I want to know, if 210 cords is only worth $2000.00, how did the price of wood increase so rapidly between the 18th and the 24th, or the value of the wood?

A. He says it was a high market for wood at that time.

Q. Was the wood higher on the 24th of May than it was on the 18th of May?

A. He says it was about the same price. The only thing, it is hard to bring it in that time, to land it there on the claim.

Q. You were talking about the same wood, were you not? The wood in this bill of sale and the wood that was sold was the same wood, was it not?

A. Yes sir, the same wood.

(Witness): I didn't see Pete Vidovich on the 18th of May when I came town. I had no interpreter except Sam Vlik; he acted as interpreter and explained this paper, Plaintiffs Exhibit A, and at the same time I told him to sign my name to Plaintiff's Exhibit B. On the morning of 18 May, when these papers were made out and signed Sam Vlik didn't give me any money or anything, only a bill of sale, that bill of sale, Plaintiff's Exhibit A.

Q. Did Sam Vlik tell you the night befoe that he was broke and the plant was going to close up?

A. No sir, he didn't tell me anything at all.

Q. Why was it that you came in on the morning of the 18th and got this bill of sale and then got these notices made out, Plaintiff's Exhibit B, and ran right back and posted them on this wood that night, if you didn't know anything about these difficulties?

(Mr. Stevens): Seven o'clock is not night on the 18th of May.

(Mr. McGowan): In the evening, then.

A. He says he told him he would give the wood back as he can't work there any more. He can't give him no money, so he would give him a bill of sale of the wood.

Q. Sam Vlik did tell you that he was not going to work there any more, did he?

A. Sam Vlik don't know for sure whether he would work or not, but he was going to give him the wood back.

Q. Did Sam Vlik tell him anything about stopping work or that he was not going to work any more? That is what I want to get at. Or that he was going to close down?

A. He said Sam Vlik told him that he don't think he will be able to go ahead and will give him a bill of sale to that wood.

Q. Then Sam Vlik told him about the trouble, before he came into town.

A. No sir.

Q. He did not. Where did you meet Sam the morning that you came in on the train? When did you meet him that morning before you got on board

the train?

A. He said he met him at Olness and he told him: "Things don't look very prosperous" and he thinks he is going to close, and he can't pay him anything, so he will give him a bill of sale of the wood back.

Q. At that same time did Sam bring the last cleanup in with you at the time he came in—the cleanup of gold that he took away from there?

A. He said he didn't tell him anything and he didn't know if he had anything or not.

Q. Mr Vlik didn't go back any more to Chatanika or Olness, did he?

A. He say he went back but he didn't know what he was going to do.

Q. Did he go back with you that night on the train?

A. He say he did go on the train with him, but he didn't know where he was going to, Little Eldorado, Chatanika, or where.

Q. When you got off the train at Chatanika, was he on the train with you; was he there with you?

A. No sir.

Q. Who paid downstairs in the commissioner's office for these papers, Plaintiff's Exhibits A. and B, Sam Vlik or you?

A. He say he paid to fix the papers, Sam Vlik.

Q. Sam Vlik paid for making out this bill of sale and this other notice?

A. Yes sir.

Q. Did he give you any other money or gold dust or anything else, at that time or any other time be-

tween the 17th and 18th?

A. Not one cent, none at all.

Q. Did you on that morning, the morning of the 18th, promise Sam Vlik when he gave you this bill of sale, Exhibit A, that you would go back to the creek and put the notices up and sell this wood, and when you sold it you would keep $1720.00 and give the rest to Sam?

A. If I sell it for any more I would.

Q. You told Sam Vlik when he gave you this bill of sale on that morning that, if you got more than $1720.00, you would give the rest of the money to Sam?

A. He said he did, because he don't think that was his.

Q. You didn't think the rest would belong to you. That is right?

A. Yes, if he sold it for more.

(Witness): I measured this wood inside of two days after I got back, with three men, they helped me. Mike, that was measuring with me, put the figures on a piece of paper, altogether they were figuring it. I couldn't do any figuring myself. All four were figuring and Mike said it figured out 193 cords. This wood was originally sold to Sam Vlik & Co. for $4.00 a cord. It was cut in 4 ft. lengths in the woods ready for use in the boiler. It cost $6.00 a cord to haul it from the hills to Sam Vlik & Co.'s claim. All of that wood was piled in one big pile; several ricks or stacks and all in one big pile together on Sam Vlik's claim when it was hauled in, altogether on

the claim. At one side near the boiler house there was another small pile of 16 ft wood, about 3 cords; it was sawed for the cook house and some for lagging too.

Q. Did you ask them at the same time to look around and see if there was anybody there, anybody else, so as to be sure there was nobody there, or anything like that?

A. He say he went with them and seen himself.

Q. But did you ask them to look around and see if the marshal was there, or anybody from the commissioner's court; to look over the plant, and see if anybody was there?

A. He says he went with them and seen himself.

Q. Did you go up to the boiler house and the mess house and see if the marshal was there at that time?

A. He says he was in the boiler house but not in the mess house.

Q. You don't know whether there was anybody on the ground at that time or not from the marshal's office, do you?

A. He say he was looking over the wood himself to see if there was any notices; then he called for the three men and put up those notices he got from commissioner Dillon.

Q. You told Mr. Stevens a few minutes ago that on the 18th there were no notices on the claim except the ones that you put up. is that right?

A. On the 18th?

Q. Yes, on the 18th, when he got back there that night.

A. No sir, he did not.

Q. And you looked all over the claim, did you, to see if you could see anybody or any papers?

A. No.

(The Court): Read that question. (Question read: "And you looked all over the claim, did you, to see if you could see anybody or any papers?")

A. Yes sir.

Q. (Mr. McGowan): Did you see the gin pole near the boiler house, or the telephone pole, or either one of them.

A. He did.

Q. Did you see any paper on either of those poles, the telephone pole or the gin pole?

A. He did not.

MIKE ONAK, sworn as a witness for plaintiff, testified through the interpreter substantially as follows:

DIRECT EXAMINATION.

(By Mr Stevens).

(Witness): My name is Mike Onak; I was a member of the partnership or firm of Sam Vlik & Company.

(It was here admitted that, prior to the month of May and some time in the spring or winter of 1912 the firm of Vlik & Co. purchased some wood from the plaintiff.)

(Witness): We bought from the plaintiff in the winter of 1912 255 cords of wood at the price of $4.00 per cord, that would be $1008.00. Sam Vlik & Co.

did not, prior to the time of their giving the plantiff this bill of sale, ever pay the plaintiff for this wood, they paid nothing at all. The plantiff furnished Sam Vlik & Co., my firm, with some horse feed from Fairbanks, for the purpose of enabling their teamster to haul this wood from the woods down to Discovery claim on Chatanika. I don't know how much it was worth, how much it cost, or how much the plaintiff got credit for, but it was four tons. I know that the plaintiff did pay $80.00 for freight and that feed.

Q. Does he know anything about the plaintiff buying any feed from the defendant Ringseth in Chatanikt that went for the same purpose, to the wood hauler for his team?

A. He said he bought, but Sam Vlik—the plaintiff gave him one hundred and ten dollars to buy feed.

Q. Did the plaintiff work for Sam Vlik & Co. prior to May 1912?

A. Yes sir, he did.

Q. Does he know how much Sam Vlik & Co. owed to plaintiff about the time this bill of sale was given on the 18th day of May 1912?

A. He says over $1500.00 to $2000.00, something.

Q. You mean between fifteen hundred and two thousand dollars?

A. Yes, it was fifteen hundred to two thousand dollars.

(Witness): That bill of sale was given to pay for wood and horse feed that he—it was given in payment of the debt that Sam Vlik & Co. owed to the

plaintiff, for what he was owing.

CROSS EXAMINATION.

(By Mr McGowan).

(Witness): I was not present when Sam Vlik gave Pavlovich the bill of sale for the wood. I first heard about the bill of sale on the 18th of May in the night when the plaintiff came back to the creek. Sam Vlik was my partner out there. Sam Vlik told me on the night before, on the 17th, he was going to town to give Pavlovich a bill of sale of the wood. Sam Vlik told me that Pavlovich stopped working for me and Sam Vlik in the neighborhood of the 10th of May.

CHRIS SPISCH, a witness called in behalf of plaintiff, being sworn, testified through the interpreter substantially as follows:

DIRECT EXAMINATION.

(By Mr Stevens).

(Witness): I was present at the marshal's sale of the wood in question on Discovery claim on Chatanika on 6 June 1912. I heard the plaintiff state to Peter Radovich that Peter Radovich should notify the marshal that that wood belonged to the plaintiff.

(It was here admitted that Peter Radovich spoke to the marshal at that time. The interpreter was then excused.)

T. THOMAS, a witness called in behalf of plaintiff, being sworn, testified substantially as follows:

DIRECT EXAMINATION.

(By Mr Stevens).

(Witness): I was present on Discovery claim, Chatanika Flats, down at Sam Vlik & Company's place, about May 20th or 21st, when the plaintiff in this case measured the wood. I helped to measure the wood. We measured one row by one stick, eight feet long, and the height to the top how many feet it was, and it was nine strings—9 rows, or 9 ricks, or 9 strings of wood. They were the same length—one was a little short—the closest to the boiler house. Eight of those strings were the same length and the ninth was a little short. One Montenegro fellow there, Pete Marcovich, helped me to measure the wood there. He has gone to the old country to go to school. And Mike, one Austrian fellow, I don't know his second name, and Vaso Pavlovich. We were four that time. We found 193 cords of 4 ft. wood, birch. We figured up some places 8 ft. high, some places 9, 10, and 11 ft., we figured up 193 cords, that is what it amounted to.

Q. Did you see at that time any notice posted up there that had Pavlovich's name, the plaintiff's, signed to it, where he claimed the wood as his?

A. No sir.

Q. Did you see any notices there that that was Pavlovich's wood?

A. That wood?

Q. Yes.

A. Yes sir, I saw at the four corners that Vaso Pavlovich notice about that wood.

Q. On the four corners.

A. Yes, on the four corners.

Q. You say that was about the 20th or 21st?

A. 20th or 21st of the same May.

CROSS EXAMINATION.

(By Mr McGowan).

(Witness): We figured how many cords we got and we write; we took our figures and wrote our figures. Mike figured it; I didn't figure it; I measured; I was there at that time; I measured and hollered to Mike "80 feet" and he put her on the paper; then he figured it up. Mike is here.

M. SURACK, a witness called for the plaintiff, being sworn, testified substantially as follows:

DIRECT EXAMINATION.

(By Mr Stevens).

(Witness): I was present on Discovery claim on Chatanika Flats on the 20th or 21st of May 1912, when the plaintiff in this case and several others measured the wood there in those nine ricks, the wood in dispute in this case. I helped to measure that wood. We used an 8 ft. pole. I made the pole myself. That wood was piled together in 9 rows together. Eight of them were of the same length and one was shorter. In some places it was 10 or 11 ft. high and in some places 8. It averaged between 8 and 10 ft. The majority of the wood was spruce and there was some of it birch, but I can't tell for sure what kind of wood it was; I didn't pay any particular attention to what kind of wood it was. The wood

was split. It was in 4 ft. lengths, ready for use in the boiler. There was 193 cords of wood. There was also a little small pile of wood; it was about 50 or 60 ft. from the big pile, close to the boiler house, toward the boiler house, but I can't remember how big that was. In that little pile there was some 16 ft wood and there was a little pile of 4 ft. wood, but that little pile of 4 ft wood was at the door of the boiler, and that long wood, 16 ft. wood, I think it was about 20 or 30 feet from the boiler. I have measured wood before I measured this wood. I understand measuring pretty well. I have had experience from 16 years of age up to now. I measured that wood according to the way I always measure wood and I found 193 cords.

CROSS EXAMINATION.

(By Mr. McGowan).

(Witness): I put the figures down in a book or on paper. I have not got it with me. I didn't measure it all separately myself; I just watched them gentlemen. I was on the top, then I went up the side and down with them other men and I marked their measurements; I kept the figures and figured it out and it was 193 cords. I didn't tell the other men how many cords there was. We put him on a paper how many cords it was—put that down—and afterwards we figured out together. I didn't figure that out all by myself. Them fellows figured it too and I watched them and I figured for myself also.

Q. And the plaintiff Pavlovich, did he figue too?

A. He say how much it was.

Q. Did Pavlovich figure?

A. He figured out without pencil, without paper. He know just how many cords there was before I put it on a paper.

Q. Had he any paper?

A. No, but he knew.

Q. You didn't tell him how many cords?

A. No, but I figure it out with a pencil.

Q. What did you do with that paper? Did you give it to Pavlovich?

A. Yes, I gave it to him.

NICK SIVIDIVICH, a witness called in behalf of plaintiff, being sworn, testified substantially as follows:

DIRECT EXAMINATION.

(By Mr Stevens).

(The Witness): I am acquainted with Vaso Pavlovich, the plaintiff in this case. I was on Discovery claim on Chatanika Flats on or about the 18th day of May last 1912. I was there, that is the day I passed by there. I was looking for a lay myself and seen that claim. I posted some notices on a big wood pile that was there. It was a great big pile but I never counted it, that is, I never measured it. I posted four notices there. One on each corner. It was after six o'clock; we had supper there. We were working for wages and then I post up. I don't know exactly what time it was but it was in the evening. Mr Pavlovich's name was signed to these notices, and if I see the notice I can read it and tell you.

(Counsel here handed to witness Plaintiff's Exhibit B, and after the witness had examined the same, he further testified as follows:)

That is a copy of the notice that was posted on the four corners of that big wood pile; the notices posted were the same as that. I did that at the request of Mr Pavlovich.

CROSS EXAMINATION.

(By Mr McGowan).

(Witness): I didn't stay on the claim with Pavlovich after that; I was working for Charlie Rosin. I didn't come away with Pavlovich. I went to Chatanika town. I gues Pavlovich came back to Chatanika after a while, I didn't watch him; I saw him in Chatanika that same day.

PETER RADOVICH, witness called in behalf of the plaintiff, being sworn, testified substantially as follows:

DIRECT EXAMINATION.

(By Mr Stevens).

(Witness): I just know Vaso Pavlovich, the plaintiff in this action, I know him when I se him. I was present on the 6th day of June 1912, at Discovery Claim on Chatanika Flats, in Fairbanks Precinct, at the time the United States marshal, or the deputy here, Mr. Carlson, sold the wood that is in dispute in this case or part of it. I asked the deputy marshal at Chatanika just befoe the sale took place if he was going to sell the wood at 2 o'clock, and he said "Yes," he was going to sell the wood at two

o'clock. Then I went down where the wood was. Then Mr Pavlovich told me what I was going to say to the marshal Mr Pavlovich says: That is my wood; anybody wants to buy that wood got to pay Mr Pavlovich. I explained that to Mr Marshal. The marshal says: I have got orders to sell that wood. Mr Pavlovich says "that is his wood, he can't lose his money, sombeody put up bonds for me." The marshal told him he could not lose his money if he owned it, because the marshal had a bond to secure him, at the courthouse. Then the marshal went ahead and sold it. I guess the marshal got $8.75 a cord for the wood. I don't know exactly how much wood he sold. I didn't pay no attention. I was sitting there. Pavlovich, the plaintiff, was there at the time of the sale. He told me what to tell the marshal and I translated from the Slavonian into English. I told the marshal just exactly in the English language what Pavlovich told me.

DAN VLIK, a witness called in behalf of the plaintiff, being sworn, testified substantially as follows:

DIRECT EXAMINATION.

(By Mr Stevens):

(The Witness): My name is Dan Vlik, I am one of the members of the firm of Sam Vlik and Company. Sam Vlik is just like a cousin to me but not quite cousin. Sam Vlik is in the old country. There was Sam Vlik and myself and Mike Onak, three of us, in this firm. I know the plaintiff. Sam Vlik &

Co. bought a lot of wood from the plaintiff in the winter of 1912. It was about 250 cords, and was located in the woods at the time Sam Vlik & Co. bought it. We bought it for $4.00 a cord in the woods, that would be $1008.00. Pavlovich furnished some feed to Sam Vlik, for the purpose of feeding the horses of the plaintiff. He bought from the Northern Commercial Company, but I don't know how much that was and he paid the freight and he used some cash to buy feed over in Chatanika. The plaintiff worked for our people, Sam Vlik & Co.. Sam Vlik & Co. didn't pay the plaintiff anything for any of the wood or feed or freight or for labor. On the 18th of May, when this bill of sale was given, Sam Vlik & Co. owed the plaintiff Pavlovich for all these matters that I speak of. We owed him in the neighborhood of $1700.00 and something $1720.00, something of that kind, that is just about right. I was not present at the time the bill of sale was given. I didn't know anything about it, excepting what has been told me. Sam Vlik was the manager of the partnership and run the business and had authority to give this bill of sale.

CROSS EXAMINATION.

(By Mr McGowan)

(Witness): I first heard about this bill of sale, plaintiff's exhibit "A", when I see it when Pavlovich came home and Sam told me so too. That was on the 18th all right. Sam didn(t speak to me the night before he went away about giving this bill of sale to Pavlovich. When he came back he told me he

gave the bill of sale to Pavlovich. I was down in the hole when Sam left the claim and he left the claim something about 4 o'lcock on the 17th. Pavlovich was living at Olness at that time and Sam must have gone to Olness to see Pavlovich. The first I heard of the bill of sale was the next day.

Q. Did Pavlovich show it to you?

A. I see the attachment and he told me.

Q. You saw the attachment?

A. Yes.

Q. Did you see the attachment before you saw this bill of sale?

A. Well, I see something the same time.

Q. The same time.

A. Something when they came back.

Q. Did the marshal serve you with any papers that night, the night of the 17th?

A. Yes sir.

Q. What time?

A. In the evening some time.

Q. Pretty near twelve o'clock, wasn't it?

A. Some time in the evening.

Q. The marshal came on the claim on the night of the 17th and served you with two papers.

A. Yes, he did.

Q. Also two summonses and two attachments. Is that right?

A. Well, I couldn't understand much meaning of them papers, but I know he did give me all right, and I know he put one on the gallows frame, and I understand he attached a dump or something like that.

Q. Did you see one at the end of the wood pile?

A. No.

Q. You didn't see one there?

A. No.

Q. Where were you when he served you with the papers?

A. I was in the cabin.

Q. Did you say about the same time that night you saw this bill of sale?

A. I don't know ehen I seen that bill of sale.

Q. Then you didn't see this bill of sale the next night?

A. I don't know when it was I seen it; I dont remember that.

Q. When Pavlovich came back on the night of the 18th and put a notice on the wood, did you see him then?

A. Yes.

Q. Were you on the claim then?

A. Yes.

Q. Never moved off?

A. Not that time, I moved the next day.

Q. Did Pavlovich stay there on the night of the 18th?

A. Did he stay there?

Q. Stay on the claim?

A. I can't remember that.

Q. Did you sleep in the bunkhouse that night?

A. Yes.

Q. Did Pavlovich sleep in the bunkhouse?

A. No, I slept in my cabin.

Q. Were you in the bunkhouse that night?

A. Who? Pavlovich?

Q. No, you.

A. In the bunkhouse?

Q. Yes.

A. No, I don't know whether I was or not. I don't know when I saw him.

Q. Didn't you testify a while ago that Pavlovich showed you this bill of sale, Exhibit A? on the night that he came back?

A. Not that time.

Q. When did he show it to you?

A. Some other time, I don't remember when it was.

Q. How long afterwards?

A. It may be a few months or days.

Q. It may be a few months or days?

A. I didn't keep track of that.

Q. When did you first hear that Pavlovich owned this wood?

A. When he came back—(interrupted)

Q. What did he show you—(interrupted)

A. On the 18th.

Q. —when he came back?

A. He showed me that attachment.

Q. Pavlovich brought you back the attachment?

A. Yes, he put it on the wood and I saw it.

Q. Then Pavlovich put on an attachment?

A. I saw him put them notices on the wood.

Q. Were you with him?

A. Yes, I was around there.

Q. Before that had you got the attachment papers?

A. Yes, I had something but I didn't know what it was.

Q. You had got some papers?

A. Yes.

Q. When Pavlovich came back and put the notices on the wood did you speak to him or did you talk to him?

A. Pavlovich?

Q. Yes.

A. Well, may be we were speaking something, but I don't remember.

Q. Did you tell him about the attachment?

A. Yes.

Q. Did he know how many attachments there were, one or two?

A. I don't know if he knowed or not.

Q. Do you remember him speaking about Ringseth; that Ringseth, the store man down there, had attached?

A. No.

Q. Mr Ringseth had attached, you knew that?

A. He gave me some papers, but I didn't know what it was.

Q. How long did Pavlovich stay with you on that night of the 18th?

A. I don't know.

Q. Was he there an hour?

A. Well, I don't remember that, if he was five minutes or two hours, I don't remember.

Q. Did he go with you back to your cabin, or to the bunkhouse, or did he go down the creek?

A. No. I went to slep right away in the evening.

Q. Right away when you saw him?

A. Not when I saw him. I went to sleep and the marshal came around and I was in the bed.

Q. You were in the bed when the marshal came around?

A. That was on the 17th.

Q. The marshal came on the 17th and you were in bed on the 17th?

A. Yes.

Q. Pavlovich had not come that night?

A. No.

Q. That was the next night?

A. Yes.

Q. Did you go to sleep the next night right after you saw Pavlovich?

A. I don't remember nothing about that.

Q. Did Pavlovich tell you to get off the claim; that he was going to hold this wood himself, and going to sleep there, or anything of that kind?

A. No, he didn't told me to get off the wood, but he told me he attached the wood.

Q. Then he went away from the claim, didn't he?

A. I don't know.

Q. You don't know?

A. Maybe he did.

Q. Did you see him there the next morning?

A. I don't remember if I see him.

Q. How many men were these those two days?

A. On the claim?

Q. Yes, in your crew, and everybody ele put to-

gether.

A. I was there and my partner—(interrupted)

Q. Onak? That is all?

A. Maybe Sam was in the bunkhouse. I was in my cabin, and there was nobody else.

Q. That was all the men that were on the claim that night of the 18th?

A. Yes.

Q. That is all?

A. That is all.

Q. You don't remember seeing anybody else then?

A. No, I don't know.

Q. You are sure Pavlovich came there the night of the 18th about five minutes, but you forget everything else?

A. I know he put notices on. I just saw him and talked to him a few words, and I didn't bother him much.

Q. You would know if he went to your bunkhouse, or a cabin, or to your personal cabin, and stayed there?

A. No.

Q. Wouldn't you know about that?

A. He didn't stay.

Q. He must have gone back to Olness?

A. I don't know.

Q. He didn't stay there that night; you know that?

A. He didn't stay there that I know of.

Q. When did you next see him on that claim?

A. On the 20th or 21st of May.

Q. What did he do at that time?

A. I se them measure the wood, that is all.

Q. Then they went away again?

A. I guess they did.

Q. And the next time you saw them there was on the 6th of June at the sale, wasn't it?

A. I guess so, some time.

Q. How long did you and your partners live on the claim after the attachment was put on?

A. I didn't live long, I went hunting for a job.

Q. Were you there three or four days?

A. I was there one and a half days.

Q. How long did your partner Onak stay there?

A. He was there quite a while, he was sick.

Q. Did he stay right there on the claim for quite a while?

A. Yes sir.

Q. Until pretty near the time of the Marshal's sale. Is that right?

A. I don't know how long he stayed; he stayed and I went to work.

Q. Were you back there at the time of the marshal's sale on June 6th?

A. I don't think I did.

Q. Everything on the claim was attached, you knew that. The boiler and the wood, and everything else, on the night of the 17th?

A. On the night of the 17th?

A. Yes. You know that. The marshal told you, didn't he?

A. Well, I don't know if there was wood attached. He says there was the bottom of the dump attached,

and some other things—boxes.

Q. He left you a paper, didn't he?

A. He left me a paper.

Q. Where is that paper?

A. I don't know; I went away, I didn't took the paper.

Q. Can you read?

A. No, very little.

Q. Did you have anybody else read that paper for you?

A. Well I had a man just as much understand as me to read them for me.

(Witness): We closed down mining operations on the 17th. Sam Vlik went away, I don't know where he went. There was a cleanup made on that same day. Sam Vlik & Co. never opened up again on that mining plant after the 17th. Sam Vlik is in the old country now.

REDIRECT EXAMINATION.

Q. (Mr. Stevens) Mr. McGowan was asking you something about the attachment. You don't know what an attachment paper is do you.

A. Yes, I know.

Q. What?

A. Yes, I guess I know.

Q. What is an attachment?

A. To put something on the wood; when I see the papers on the boiler house or something like that I know that is an attachment.

Q. You said that the plaintiff in this case attached that wood. What did you mean by that?

A. I don't say he attached the wood.

Q. You did say it. But you didn't mean that, is that it? You said Pavlovich attached the wood.

A. Yes.

Q. Did he?

A. Yes, he attached the wood.

Q. How did he attach it?

A. He put four notices on the wood, on the piles.

Q. As a matter of fact he put a notice on the wood there that he owned the wood.

A. Yes.

Q. That is not an attachment. You don't know what an attachment is, do you.

A. I guess that is an attachment, I don't know.

Q. Mr Pavlovich never brought a suit against you to attach that wood.

A. Well, no.

Q. He went down and got a bill of sale to it, and put up a notice that he owned it.

A. Yes.

(The plaintiff here closed his case and rested.)

MOTION FOR NON-SUIT AND DIRECTED VERDICT.

(Mr Clark): At this time we move the Court to direct the jury in this case to bring in a verdict for the defendant; first, for the reason that the plaintiff in this case has failed to prove his case, in that he has not proven that the plaintiff in this case had any title to the wood in question upon the date the suit was instituted, or at the time the attachment was

levied, or at the time the property was sold under execution, as has been testified to; second, on the ground that it clearly appears that this transfer of the 18th of May 1912, from Sam Vlik & Co. to the plaintiff in this case, was done for the purpose of giving him a preference, and to hinder, delay, and defraud the creditors of the **defendant;** third, that it conclusively appears that the transfer was not a bill of sale transferring the title to the property, but was merely a mortgage given for the purpose of securing the indebtedness due from Sam Vlik & Co. to the plaintiff in this case, and that the plaintiff in this case was to hold the property until such time as he could sell it and get his money out, and turn the balance of it over to Sam Vlik. Further, it appears conclusively from the testimony that has been introduced on behalf of the plaintiff that the plaintiff never took such possession of the property as might validate a mortgage of that character, that is, in order to have a valid chattel mortgage, where there is no affidavit of merits and where it is not executed with the formalities prescribed by law, immediate possession must be taken and the possession must have been continuous thereafter, and that not such a possession was taken by the plaintiff in this case as would justify this Court in holding that that was a valid chattel mortgage, as it was undoubtedly intended from the conditions under which it was turned over. Further, that he was not in a position to take possession of the property, as it was then, and admittedly had been, attached by the marshal in the suit of

Paul Ringseth, the real party defendant in this case, against Sam Vlik & Co.

(The motion was thereupon argued by counsel for the respective parties and submitted to the Court for decision.)

(The Court) The motion will be denied.

(Mr Clark) We save an exception.

Ex. 4. (The Court) Exception allowed.

LYSLE D. BROWN, a witness called in behalf of the defendant, being sworn, testified substantially as follows:

DIRECT EXAMINATION.

(By Mr McGowan).

(Witness): On the 17th and 18th days of May 1912 I was a deputy United States marshal in the Fourth Judicial Division of the Territory of Alaska and was on Chatanika Creek, at Chatanika city, on those days.

(Mr. McGowan): I have here the record from the commissioner's Court in Ringseth vs. Sam Vlik, which is certified on the 9th day of December 1912, by Mr Weiss, the commissioner, and at this time I offer in evidence the writ of attachment, together with the return thereto. I am not offering the entire record. I will offer the papers in sequence, in order.

(The writ of attachment was thereupon offered and received in evidence and marked Defendant's Exhibit 1, and is in the words and figures following, to wit:)

DEFENDANT'S EXHIBIT "1".

In the Commissioner's Court, Chatanika, For Fairbanks Precinct, Fourth Division, Territory of Alaska.

Paul Ringseth, plaintiff, vs. Sam Velik & Co., Defendant. No... Writ of Attachment.

The President of the United States of America, To the Marshal of the Territory of Alaska, Fourth Division, or his Deputy, Greeting:

Whereas, Paul Ringseth hath complained that Sam Velik & Co. justly indebted to Paul Ringseth to the amount of One thousand Dollars and ... cents and the necessary affidavit and undertaking herein having been filed as required by law.

We therefore command you, That you attach and safely keep all the personal property of the said defendant not exempt from execution, or so much thereof as may be sufficient to satisfy the plaintiff's demand, as above stated, to be found in your Division of said Territory, and as shall be of value sufficient to satisfy the said debt and the costs and disbursements of the said plaintiff herein. And of this writ make due service and return.

Given under my hand and official seal this 17th day of May 1912.

(Seal) SAMUEL R. WEISS,

Commissioner and ex officio Justice of the Peace.

(Indorsed): No... In the Commissioner's Court Territory of Alaska, Fairbanks Precinct, Fourth Division. Paul Ringseth, Plaintiff, vs. Sam Velik & Co., Defendant. Writ of Attachment. Returned and filed this 18th day of May 1912. Samuel R. Weiss,

Commissioner and ex officio Justice of the Peace. — 4th Div. Dist. of Alaska, Received May 18 1912 Office of U. S. Marshal, Fairbanks, Alaska. — Marshal's Docket No. 3806. Writ docketed May 18, 1912. Return docketed... 19..)

(Mr Stevens objected to the papers and after discussion announced:)

(Mr Stevens): We deny the jurisdiction of the commissioner's court here, and all proceedings under it; except, I think, there is an admission there that the suit was commenced. That is an admission, because it is not denied. I will read section 77 of the Code. (Reads same. Argument.) We have admitted that there is such a place as Chatanika and such a court as the commissioner's court, and that on such and such a day a summons was duly issued and placed in the hands of the marshal; but we do not admit it was duly served, except that a copy was served on Dan Vlik. But, when it comes to prove what was done under that attachment, there is no admission, and he attempts to prove it by introducing the marshal's return.

(The Court): If that is admitted there is no necessity of introducing it.

(Witness): I received that writ of attachment in the case of Paul Ringseth vs. Sam Vlik & Co. on the 17th day of May 1912. After receiving it I went to Discovery claim on Chatanika and found Dan Vlik, along about 10 or 11 o'clock at night, and served him with a copy of the writ of attachment and the sum-

mons and I posted a notice on the wood pile on a post that was standing close to the wood. Then I went back to Chatanika after posting the notice. I don't think I made my return on the 18th. I think I stayed out at Chatanika all the next day and came in the next day and made the return. I made my return and turned it over to Mr. Carlson, who put it in a file and he attended to it. Before turning it over to him I attached my return to the writ of attachment.

(The Marshal's return was here shown to the witness and was offered and admitted in evidence, read to the jury, and marked Defendant's Exhibit 2, and is in the words and figures following:)

DEFENDANT'S EXHIBIT "2".

In the Commissioner's Court for the Fourth Division, Territory of Alaska.

Paul Ringseth, Plaintiff, vs. Sam Velik & Co., Defendants.

United States of America, Territory of Alaska, Fourth Division, ss.—Marshal's Return on Writ of Attachment.

I hereby certify and return that I received the annexed Writ of Attachment, on the 17th day of May 1912, and I executed the same on the 17th day of May 1912;

By delivering a copy thereof duly certified by me to Dan Velik, at Chatanika, Alaska, said Dan Velik being one of the partners of the firm of Sam Velik & Co. And by Attaching all the right, title and interest, of the above named defendants, in and to,

one lot of wood near boiler house on Discovery claim, Chatanika River, and one lot of provisions in cabin on Discovery claim, Chatanika River, Fairbanks Recording district Territory of Alaska.

Dated at Fairbanks, Alaska, this 18th day of May 1912.

H. K. LOVE, U. S. Marshal,
by L. D. BROWN, Deputy.

Marshal's Fees $4.00.

(Witness): On the night of the 17th of May, under and by virtue of this writ of attachment, I posted one notice later. First I served the summons on Dan Vlik, and a copy of the writ of attachment. Then I posted a notice on the big wood pile, on one end of the pile. There was a number of piles there; it was 4 ft. wood. I tacked it on to a big birch stick, one of the largest I could find and placed it at the end of the pile, and as I remember it, it claimed 200 cords of wood more or less, and one lot of provisions and cooking utensils. Then I posted another one on —I don't know whether it was a gin pole or a telegraph pole, but it was something about 8 or 10 ft. away from the big pile. There was a small pile of wood near to the cook house, used for cooking, and wood for the cook house. It was just to one side there with the wood saw; there might have been a cord or two there. I didn't place any notice on that small pile. I have neither the original nor a copy of the notice that I posted. The notice were posted on the pile and might have been destroyed, but I don't know. With reference to the contents of that notice.

I don't remember exactly the wording of it. "I claim 200 cords of wood more or less, located on Discovery claim, Chatanika, and all the right, title, and interest to the above wood and cooking utensils, grub,—" and I believe it was a cabin that they owned there, but I won't be positive as to that. I signed that notice "H. K. Love, United States Marshal, by Lysle D. Brown, Deputy." This notice had the title of this case: Ringseth vs. Sam Vlik & Co. That notice was on a regular notice blank, furnished at Chatanika, by the commissioner; they are the same kind of blanks that are used in the marshal's office. Then I went back to Chatanika, back to town, and went to a dance. In a little while,—I don't know how long it was,—they came after me again and said there was another writ of attachment for the same people. That writ was issued by a man named McLean and when I received that I did the same thing over again, attached the same wood and posted the notices right beneath them on the same wood. This was in the second suit from the same commissioner's court. In that second suit I went back to the claim, Discovery claim, and posted a notice right underneath each of those others, one alongside of the wood pile and one beneath on the pile and I gave Dan Vlik a copy of the summons and attachment. When I went back the second time I found Dan Vlik in possession. He was there. I didn't see Mr Pavlovich there at that time. I completed both of these levies probably some place between 11 o'clock on the 17th and 1 o'clock in the morning of the 18th, between 11

o'clock on the night of the 17th and 1 o'clock on the morning of the 18th. When I got through there and when I finished the service of all these papers there were six notices, I believe, posted on this ground.

Q. (Mr. McGowan): I will hand you a blank notice (hands to witness) and ask you if that is the form you used.

A. Yes.

Q. On those same blanks?

A. Yes sir.

(The blank was here offered and received in evidence, read to the jury, and marked Defendants Exhibit "3," and is in the words and figures following:)

DEFENDANT'S EXHIBIT "3".

Form No. 39.—Public Notice of Attachment.

Office of the Marshal of the United States, ...
District of....., ... 190...

This.....having been attached by me and now being in my possession by virtue of a..... issued out of the District Court of the United States for the.....District of.....

Notice is hereby given that any person removing or attempting to remove said.....without my written permission, or in any way interfering with said ..... or my duly authorized Deputy or Keeper in charge thereof, will be prosecuted to the extent of the law.

.....U. S. Marshal.

(Witness): In using these blanks we changed them from the District to the Commissioner's Court,

changed it to Commissioner's Court, Chatanika, I filled it in. "This lot of wood, two hundred cords more or less, having been attached, and now being in my possession by virtue of a writ of attachment issued out of the Commissioner's Court at Chatanika for the Fourth Division, District of Alaska. Notice is hereby given that any person removing or attempting to remove said wood or any part thereof without my written permission, or in any way interfering with said wood or my duly authorized deputy or keeper in charge thereof, will be prosecuted to the extent of the law. H. K. Love, U. S. Marshal, by Lysle D. Brown, Deputy." I mentioned the number of cords in there,—everything I said a while ago,—everything that I attached was mentioned in that notice.

(Counsel for defendant here offered the writ of attachment in the case of McLean vs. Vlik & Co., which was admitted, read to the jury, and marked Defendants Exhibit "4", and is in the words and figures following:)

DEFENDANT'S EXHIBIT "4".

In the Commissioner's Court (Chatanika) For Fairbanks Precinct, Fourth Division Territory of Alaska

John McLean, Plaintiff, vs. Sam Velik & Co., Defendant. No. 36 Writ of Attachment.

The President of the United States of America, To the Marshal of the Territory of Alaska, Fourth Division, or his Deputy, Greeting:

Whereas John McLean hath complained that Sam Velik & Co. justly indebted to John McLean to the

amount of One thouand Dollars and....cents and the necessary affidavit and undertaking having been filed as required by law.

We therefore command you, That you attach and safely keep all the personal property of the said defendant not exempt from execution, or so much thereof as may be sufficient to satisfy the plaintiff demand, as above stated, to be found in your Division of said Territory, and as shall be of value suficient to satisfy the sid debt and costs and disbursements of the said plaintiff herein. And of this writ make due service and return.

Given under my hand and official seal this 18th day of May 1912.

(Seal) SAMUEL R. WEISS,

Commissioner and ex officio Justice of the Peace.

(Indorsed): No... In the Commissioner's Court Territory of Alaska, Fairbanks Precinct, Fourth Division. Jack McLean, Plaintiff, vs. Sam Velik & Co., defendant Writ of Attachment Returned and filed this 18th day of May, 1912 Samuel R. Weiss, Commissioner and ex officio Justice of the Peace. 4th Div. Dist. of Alaska Received May 18.. 1912 Office of U. S. Marshal, Fairbanks, Alaska. —Marshal's Docket No. 3807. Writ docketed May 18— 1912. Return docketed...)

(Witness): When I served this McLean writ I just repeated the same as the first. I went from the dance at the hall and went to Discovery claim on Chatanika and served the writ of attachment and summons, duly certified, on Dan Vlik, a member

of the firm of Sam Vlik & Co., and I posted one notice on the wood pile alongside of the Ringseth notice, and one underneath on the telegraph post or gin pole—whatever it was. That was all. I read him a copy; he said he couldn't read English and I lit a candle in his cabin and read it to him, and told him that he woul have to appear in Court. I left with Dan Vlik a copy of the summons and complaint and the attachment. In making that levy I used the same form that was introduced here a monent ago and marked Defendant's Exhibit 3, making the same changes as stated in the others, as stated in my testimony with reference to Defendant's Exhibit 3. After making these levies I left a custodian in charge of this property that I levied on. Paul Ringseth was appointed custodian of the wood, he was appointed by me. I conferred with the commissioner, Mr. Weiss, and he told me that would be all right, told me to do that. I then left the ground and returned to Chatanika, where I remained all night and left the next morning. After I had completed my service in the McLean case I made a return on the McLean attachment.

(Counsel for defendant here produced said return and handed same to the witness for inspection).

That is the return that I made.

(The return was here offered and admitted in evidence, read to the jury and marked Defendant's Exhibit "5", and is in the words and figures following:)

DEFENDANT'S EXHIBIT "5".

In the Commissioner's Court for the Fourth Division Territory of Alaska.

John McLean, Plaintiff, vs. Sam Velik & Co., Defendant.

United States of America, Territory of Alaska, Fourth Division, ss.—Marshal's Return on Writ of Attachment.

I hereby certify and return that I received the annexed Writ of Attachment on the 18th day of May 1912 and executed the same on the 18th day of May 1912:

By delivering a copy thereof duly certified by me to Dan Velik, at Chatanika, Alaska, said Dan Velik being one of the partners of the firm of Sam Velik & Co. And by Attaching all the right, title, and interest of the above named defendants, in and to one lot of wood and provisions situated on Discovery claim, Chatanika River, Fairbanks Recording District, Territory of Alaska.

Dated at Fairbanks, Alaska, this 18th day of May 1912.

H. K. LOVE, U. S. Marshal,
by L. D. BROWN, Deputy.

Marshal's Fees $4.00.

CROSS EXAMINATION.

(By Mr Stevens).

(Witness): I had been a deputy marshal a little over three months prior to the 17th day of May 1912. I was located in Fairbanks; I was an office deputy, I was supposed to be. I was an office deputy

in the office here in Fairbanks for nearly six months, between five and six months. I would go out on trips to the creeks probably two or three times a week and had made attachment services before making the ones testified to by me; I don't remember how many. I went back there on the 18th of May and posted another notice on the big pile of wood, in the McLean case. It is not a fact that I came back and reported to Mr Love in his office that I had attached 3 or 4 cords of wood. That was a misunderstanding over the telephone. Mr. Carlson asked me over the telephone what I had attached. I generally called up every day when I was out on the creeks. I said: "We attached a bunch of wood out here, but I guess we can only hold 3 or 4 cords." That is what he claimed. I told him (meaning Dan Vlik) "there is a bond put up and if they sell the wood you will get damages, but I have got to attach the wood," so I posted the notices on the wood and explained to him in both instances. I posted those notices on the night of the 17th and 18th, and telephoned the marshal's office next day, on the morning of the 18th. Both attachments were served near midnight and the wood was under both attachments when I telephoned. The notices were posted within an hour or two probably; it was between 11 o'clock p, m, of the 17th of May and 1 o'clock a. m. of the 18th af May that both attachments were served. I know that Sam Weiss issued the attachments some time about midnight of the 17th. I didn't report to the office that I had attached 3 or 3½ cords of wood.

When Mr Carlson saw me next day and saw my return, he said "This is not what you told me over the 'phone". I said "You misunderstood me." When I told him over the telephone I said: "All we can hold is the three cords; they (meaning Sam Vlik & Co.) claim not to own the other 200 cords." They didn't mention any names. He (Dan Vlik)said "We don't own that". There was some fellow out there at the wood pile when I was there and he said "The wood don't belong to Vlik." I don't know his name. I said I had orders to attach it and would attach it. He was a foreigner. At the time I levied on this wood I didn't see any other notice on the wood or around the wood any place. I didn't make an inventory before I attached; I did later; it wasn't exactly an inventory; I made note of 200 cords of wood and cooking utensils. I put notices on a pole as well as on the wood. It is the usual custom to post three or four notices around in conspicuous places. It is not a fact that I put a notice on the pole and didn't put any on the big wood pile; I put notices on both; the same kind of notices. When Ringseth was appointed custodian he was in Mr Weiss's office down at Chatanika and Mr Weiss was there. Mr Ringseth was appointed custodian of that wood right there when we were talking; it was agreed that he was to be the custodian; this was done before the levy was made. I didn't appoint him in writing. I don't know whether Mr Weiss gave him any authority in writing or not. I remember being in judge Day's office when this transaction was discussed I

was not in company with Peter Vidovich. I was in Mr Day's office a number of times this summer. He asked me several times about this transaction; I never mentioned it personally to him in my life, he mentioned it to me. I have no idea as to the time. I think it was after this suit was brought, late in the summer time, after I left the marshal's office.

Q. Were you there one time when Peter Vidovich was there?

A. I think I have been there two or three times when he was either there or leaving there.

Q. I will ask you, Mr Brown, whether or not it is true that, at one time last summer, when you were in judge Day's office, and Mr Pete Vidovich was there, and no one else being present, just the three of you, judge Day, Peter Vidovich, and yourself, that you were talking about this attachment that we are now taking about, and that you stated to judge Day and to Peter Vidovich, in substance, that you only attached three or three and a half cords of wood, and that was on the small pile, and that was where you placed your notices, and that was all the wood that you did attach. Didn't you say that.

A. I did not.

Q. Or words to that effect?

A. No, I never did.

Q. You swear positively you did not?

A. I swear positively the only thing I ever told judge Day is the same words I told Carlson over the telephone; that the boys—that the only wood they claimed to own was three and a half cords. And

I told just the words as I remembered them; as I explained them to him, and what he told me.

Q. I asked you whether or not you told to Judge Day and Peter Vidovich on that occasion that you posted the notices on the small pile.

A. No.

Q. And didn't on the large pile?

A. I never said a word to that effect in any way, shape, or form.

Q. And that, when you referred to the pile of wood that you attached, you referred to a pile of three or three and a half cords?

A. I did not.

Q. You deny that positively?

A. I deny that positively.

(Counsel for defendant here offer in evidence the original summons in the case of Ringseth vs. Sam Vlik & Co., which was admitted, read in evidence, and marked Defendant's Exhibit "6", and is in the words and figures following:)

DEFENDANT'S EXHIBIT "6".

In the Commissioner's Court For Fairbanks Precinct, Fourth Division, Territory of Alaska

Paul Ringseth Plaintiff vs. Sam Velik & Co Defendant No..... Summons

To the United States Marshal of the Territory of Alaska, or any Deputy:

In the name of the United States of America, we command you to summon Sam Velik & Co. to appear before me the undersigned, a Justice of the Peace in Fairbanks Precinct in said Territory, on the 24th day

of May 1912 at the hour of two o'clock in the afternoon of said day at my office in the Court House at Chatanika in the said precinct, to answer the complaint of Paul Ringseth founded upon money and wherein he demands one thousand Dollars.

Given under my hand and official seal this 17 day of May 1912.

(Seal) SAMUEL R. WEISS,

Commissioner and ex officio Justice of the Peace.

(Indorsed): No.. In the Commissioner's Court Territory of Alaska, Fourth Division, Fairbanks Precinct. Paul Ringseth Plaintiff vs. Sam Velik & Co. Defendant Summons ... Attorneys for plaintiff. Returned and filed this 18th day of May 1912 Samuel R. Weiss, Commissioner and ex officio justice of the Peace. 4th Div. Dist. of Alaska Received May 18 1912 Office of U. S. Marshal Fairbanks, Alaska.— Marshal's Docket No. 3806. Writ docketed May 18 1912 Return docketed.....19,...

PAUL RINGSETH, a witness called in behalf of the defendant, being sworn, testified substantially as follows:

DIRECT EXAMINATION.

(By Mr McGowan)

(Witness): I am the plaintiff in this case of Ringseth vs. Sam Vlik & Co., which was commenced before justice Weiss.

Q. Did you attend before the commissioner at Chatanika at the time that the summons was returnable.

(Mr. Stevens): We object as being immaterial,

incompetent, and the only possible purpose of Mr McGowan is to bolster up and change by extrinsic testimony—by oral testimony, the records in this case. The law is that you can neither explain, change, or add to the court proceedings.

(Mr McGowan): He can tell what happened at the trial.

(Mr Stevens): No sir, he can't do that.

(Mr McGowan): There is nothing in this judgment to show the hour ir was rendered, which I intend to prove by this witness. This record shows that the case came on regularly for trial at 2 o'clock, which was the hour fixed. It shows further that, on the 24th day of May 1912, this judgment was rendered, but there is no time shown in the judgment or in the docket as to the time of rendition. We can prove by positive testimony of witnesses in the court at that time that the judge did wait an hour before signing the judgment. That is the purpose of the testimony at this time of this witness.

(The Court): You can hardly prove that by parol testimony.

(Mr. Clark): We are not asking to change the record, but to explain it.

(The Court:) It seems that that would be changing, because the record on its face appears to show that the judgment was rendered at 2 o'clock.

(Mr Stevens): There is no testimony that will allow them to bolster up the record.

(Mr McGowan): This is not for the purpose of bolstering up the record, but to show a fact. The

docket is absolutely silent as to the hour this took place.

(Mr McGowan argues the matter of the offer of the parol testimony and the objections made by plaintiff.)

(The Court): I think the objection should be sustained.

(Mr McGowan): The purpose is to show that he left out "3 p. m."

(The Court): I think that is something you can not introduce here. You may make your offer if you wish to.

Ex. 5—(Defendants except; exception allowed.)

SAMUEL R. WEISS, a witness called in behalf of defendant, being sworn, testified substantially as follows:

DIRECT EXAMINATION.

(By Mr McGowan)

(Witness): I am commissioner and ex officio justice of the peace at Chatanika, Fairbanks Precinct, Alaska. I have held that office for two years. I was Commissioner in the months of May and June 1912. (Witness produces his docket). This is my docket. Pages 500-501 of my docket refer to case No. 35, Paul Ringseth vs. Sam Vlik & Co., and pages 502-3 of the same docket refer to the case of Jack McLean vs. Sam Vlik & Co.

(Counsel for defendant here offer in evidence the entry on page 501 of said docket, beginning about the middle of the page, the first

day being 24 May, and ending with the words "Commissioner and ex officio Justice of the Peace", which was admitted and read to the jury, and a certified copy thereof was marked Defendant's Exhibit "7", which is in the words and figures following:)

DEFENDANT'S EXHIBIT "7".

May 24 The case came up for trial this 24th day of May 1912 at 2 P. M.

Plaintiff present. Defendants absent. So the case went by default. Therefore

It is ordered and adjudged that Paul Ringseth, plaintiff, do have and recover of and from the said defendant Sam Velik & Co., defendants, the sum of One Thousand 00-100 Dollars, with interest thereon at the rate of 8 per cent per annum until paid and costs of suit amounting to eighteen and 70-100 Dollars.

Judgment rendered this 24th day of May 1912.

Let execution issue.

SAMUEL R. WEISS,

Commissioner & ex Officio Justice of the Peace.

(Counsel for defendant here offer in evidence the entry on page 503 of said docket, the first date being May 24, and ending with the words "Commissioner and ex officio Justice of the Peace", which was admitted and read to the jury, and a certified copy thereof was marked Defendant's Exhibit "8", and is in the words and figures following:)

DEFENDANT'S EXHIBIT "8".

May 24 The case came up regularly for trial this 24th day of May 1912, at 3 o'clock in the afternoon. Plaintiff present. Defendants absent, so the case went by default, therefore it is adjudged and ordered that Jack McLean plaintiff do have and recover of and from Sam Velik & Co. defendants the sum of One Thousand 00-100 Dollars with interest thereon at 8 per cent and costs taxed at $18 70-100 Judgment rendered this 24th. day of May 1912.

Lat execution issue.

SAMUEL R. WEISS

Commissioner and ex officio Justice of the Peace.

Q. (Mr McGowan): Referring to case No. 35, Paul Ringseth vs. Sam Vlik & Co., and to page 501 of your docket, to the entry of May 24th, will you kindly state when that entry was made.

(Mr. Stevens): We object. The docket is the best evidence, and the Court himself can not at this time contradict his record, and therefore it is inadmissible for any purpose.

(The Court): Objection sustained.

(Mr McGowan): We offer to prove at this time by the testimony of this witness, that the entry shown on page 501 of the justice's docket in the case of Paul Ringseth vs. Sam Vlik & Co., being the judgment in said case, was not made or entered in said docket until after the hour of 3 p. m. on the 24th day of May 1912, and that judgment was not rendered until that time, and that he waited one hour after the hour of 2 o'clock on that day.

(Mr. Stevens): We object to that testimony as not competent, being an attempt to contradict the record, which is against public policy, and we ask the Court to deny the offer and instruct the jury not to consider that offer, as it has nothing to do with this case.

(The Court): The offer is denied, and the jury are instructed to not consider the offer as testimony in this case.

Ex. 6. (Mr McGowan): We except. We make the same offer in the case of Jack McLean vs. Sam Vlik & Co., as it appears on page 502 and 503 of the justice's record, with this exception, that the hour should be changed from 2 to 3 o'clock, and the entry of the judgment until after the hour of 4, without repeating the language, if that is satisfactory.

(Mr Stevens): We make the same objection.

(The Court): The offer is denied.

Ex. 7. (Mr McGowan): We except.

(The Court): And the jury is instructed to disregard the offer.

(Witness) After the entry of the judgment in the case of Ringseth vs. Sam Vlik & Co. I took further proceedings in the action as shown by my docket. My docket shows an entry on May 28. (Counsel for defendant hand a paper to the witness). This is the execution that I issued in this case.

(Counsel for defendant here offer in evidence the execution and the return thereon in

the case of Ringseth vs. Sam Vlik & Co., which was admitted, read to the jury and marked Defendant's Exhibit "9", as is in the words and figures following:)

DEFENDANT'S EXHIBIT "9".

In the Justice's Court For the Territory of Alaska, Fourth Division Fairbanks Precinct

Paul Ringseth Plaintiff vs. Sam Velik & Co. Defendant. No..... Execution.

The President of the United States of America, To the Marshal of Said Division and Territory, or any Deputy: Greeting:

Whereas, Paul Ringseth recovered judgment against Sam Velik & Co. in the Justice's Court for the Fairbanks Precinct, said Division and Territory, on the 24th day of May 1912, for the sum of One Thousand Dollars, with interest thereon at the rate of eight per cent. per annum until paid, and costs of suit, amounting to Eighteen and 70-100 Dollars

Therefore, in the name of the United States of America, you are hereby commanded to levy upon, seize and take into execution the personal property of the said Sam Velik & Co. in your Division of said District sufficient, subject to execution, to satisfy said Judgment, interest and increased interest, costs and increased costs, and make sale thereof according to law, and make return of this writ within thirty days from the date hereof.

Herein fail not, and have you then and there this writ.

Witness my hand and the seal of said Court hereto affixed this 24th day of May A. D. 1912.

(Seal) SAMUEL R. WEISS.

Commissioner and Ex Officio Justice of the Peace.

Marshal's Return.

United States of America, Third Division, Territory of Alaska.

I hereby certify, That I received the within execution on May 25th, 1912 and executed the same May 25, 1912; By seizing and taking into my possession One hundred cords (100) more or less of four foot Birch wood now situated on Discovery claim Chatanika Flats. Also by seizing all cooking utensils and other personal property now situated in cabin at said place and posting notices of Marshal's sale in three public places within five miles of said property to wit: One on wood at said place; one on post near Grand Hotel in Chatanika, one on post office door at Cleary City. Said sale to be held near Boiler House on said claim on the 6th day of June 1912. Dated at Fairbanks, Alaska this 28th day of May 1912.

H. K. LOVE, United States Marshal,
by L. D. BROWN, Deputy.

Marshal's Fees $4.00, Mileage $13.20.

(Indorsed:) No.... Justice's Court Territory of Alaska Fourth Division. Paul Ringseth Plaintiff vs. Sam Velik & Co. Defendant Execution. —4th Div. Dist. of Alaska Received May 25 1912 Office of U. S. Marshal Fairbanks, Alaska—Marshal's Docket No. 3806 Writ docketed May 25 1912 Return docketed

June 7 1912.)

(Counsel for defendant here hand another paper to the witness).

(Witness): This paper is also one of the files of my office.

(Counsel for defendant here offer said paper, being the execution in the case of Jack McLean vs. Sam Vlik & Co., in evidence, and the same having been admitted, is marked Defendant's Exhibit "10", and is in the words and figues following:)

DEFENDANT'S EXHIBIT "10".

In the Justice's Court for the Territory of Alaska, Fourth Division Fairbanks Precinct

Jack McLean, Plaintiff vs. Sam Velik & Co. Defendant. No. 36. Execution.

The President of the United States of America, To the Marshal of said Division and Territory, or any Deputy, Greeting:

Whereas, Jack McLean recovered judgment against Sam Velik & Co in the Justice's Court for the Fairbanks Precinct, said Division and Territory, on the 24th day of May 1912, for the sum of One Thousand Dollars, with interest thereon at the rate of eight per cent. per annum until paid, and costs of suit, amounting to eighteen and 70-100 dollars

Therefore, in the name of the United States of America, you are hereby commanded to levy upon, seize and take into execution the personal property of the said Sam Velik & Co. in your Division of said District sufficient, subject to execution, to satis-

fy said judgment, interest and increased inteest, costs and increased costs, and make sale thereof according to law, and make return of this writ within thirty days from the date hereof.

Herein fail not, and have you then and there this writ.

Witness my hand and the seal of said Court hereto affixed this 11th day of June, A. D. 1912. Samuel R. Weiss, Commissioner and ex officio Justice of the Peace. (Seal)

(Indorsed:) Justice's Court Territory of Alaska, Fourth Division Jack McLean Plaintiff vs. Sam Velik & Co. Defendant Execution.

(Witness): This execution was returned and filed in my office on July first, that appears from my docket.

(Mr Stevens): I would like to ask Mr Weiss some questions. It may not be technically cross-examination.

(Mr McGowan): Then you will make him your own witness.

(Mr Stevens): I will ask him the questions.

SAMUEL R. WEISS, recalled as a witness in behalf of plaintiff, testified substantially as follows:

(By Mr Stevens):

(Witness): In the case of Ringseth vs. Sam Vlik and Company, concerning which I have been testifying, the execution was issued and returned and the marshal made a sale of the wood in controversy

thereunder. My docket shows that the sale was made. (Witness produces docket). There is a record of the sale (pointing to docket).

LYSEE D. BROWN, recalled as a witness in behalf of defendant, testified substantially as follows:

(By Mr. McGowan): (counsel hands Exhibits 9 & 10 to witness).

(Witness): I received Exhibit No. 9 but not No. 10; Exhibit No. 9 is the execution in the case of Paul Ringseth vs. Sam Vlik & Co.; May 25th is when I received it.

Q. What did you do when you received that execution, Defendant's Exhibit 9?

A. I posted notices of marshal's sale; one on the postoffice at Cleary City, one on a telephone post, I mean, in front of the postoffice at Cleary City, and one on the claim on the wood, near the wood. I don't remember exactly where I posted the notices.

Q. Have you a copy of the notice of sale you posted?

A. This is my return here?

Q. That is not your return, but this one is, isn't it? (producing).

A. This is mine here (indicating).

Q. Where is the original notice?

A. It must be in the marshal's office on file.

(The Court): This sale seems to be admitted.

Mr. Stevens): We admit on page 4, subdivision I, that said defendant, on the 25th day of May, 1912,

duly advertised all of said wood for sale by posting notices in the manner aforesaid, which notices provided that the said property would be sold on the 6th day of June 1912, etc., and the amount that you received for it was $1076.25, and that it brought $8.75 a cord. We admit all that by our reply, so it is unnecessary to go into proof of these notices.

(The Court): You deny any sale under the other execution.

(Mr Stevens): We deny any valid sale of course. We admit that he sold it under this execution. We deny that the execution was valid and that the judgment was valid, but we admit that he advertised it to sell it and did sell it.

(Mr McGowan): You admit that the marshal advertised the property as required by law, and sold it under execution.

(Mr Stevens): Yes.

(Mr McGowan): That goes to the case of Ringseth vs. Sam Vlik & Co.

(Mr Stevens): Yes.

(Mr McGowan): And in regard to the McLean case against Sam Vlik & Co.—

(Mr Stevens): I will look and see if we admit it. We deny that he duly levied, etc. Page 7.

(Mr McGowan): The Ringseth one is admitted. Is that correct?

(Mr Stevens): We admit that you posted notices and made the sale.

(Mr McGowan): Posted three notices, as required by law?

(Mr Stevens): Yes; we can't deny it, and so admit it.

Q. (Mr McGowan): Did you ever receive the execution, Defendants Exhibit 10, in the case of McLean vs. Velik & Co. at any time?

A. No sir.

(Mr Stevens): We admit that you posted notices in the manner prescribed by law, but not that any of them were valid.

CROSS EXAMINATION.

(By Mr. Day).

(Witness): I think I recollect the talk that three of us had in Mr Day's office. I don't remember it word for word; I don't remember what was said. I remember I was up to see you (meaning Mr. Day) and I think I remember Mr Vidovich being there. I can't be positive. I think he was there two or three times.

Q. Now, at that time, didn't you say to me that you did not make any levy on that big pile of wood?

A. No sir, I did not.

Q. Didn't you at that time say that you attached that small pile of wood near the boiler house?

A. No. I said—What I told you was the same thing I told the rest of them! that you probably could only hold that 3½ cords of wood, as the other men claimed it—the plaintiff in this case claimed the wood and Sam Vlik & Co. didn't own it, and we probably could only hold 3½ cords. That is what I told you; the same as I told the marshal over the telephone, and he misunderstood it.

(It was here admitted that the witness was subpoenaed to attend this trial in behalf of the plaintiff in this action.)

Q. And didn't you say to Mr Vidovich and me, there in my office that day, that you would go on the stand in this case and testify that you only levied on that small pile of wood?

A. I did not.

Q. Under the attachment?

A. I did not.

S. B. WAITE, a witness called in behalf of defendant, being sworn, testified substantially as follows:

DIRECT EXAMINATION.

(By Mr McGowan).

(Witness): I am a deputy in the marshal's office of this division and have been for two years; I was deputy marshal in the months of May and June 1912.

(Defendant's Exhibit 10 handed to witness, being execution in case of McLean vs. Vlik & Co. Witness examines papers.)

(Witness): I have seen this paper before and my return indorsed thereon shows that I received it on the 12th of June 1912. After receiving it I proceeded to Chatanika. I don)t remember exactly when I arrived there. After arriving there I posted notices of sale on the property covered by this execution. I posted notices of sale, one in the post-office at Cleary, on the 14th day of June, one on the boiler house on the claim involved, and one at Chat-

anika on a telephone pole. Three notices were all that I posted. (A paper is here handed to witness by counsel for defendant). This is a copy of the notice I posted. These notices were within five miles from the property.

(Counsel for defendant here offered the notice in evidence, same was admitted, and marked Defendant's Exhibit 11.)

(Mr Stevens): I think we have admitted there was a sale made.

(Mr McGowan): In this case as well?

(Mr Stevens): I don't know.

(Mr McGowan): Do you admit it now, that a sale was made?

(Mr Stevens): Yes, that you sold our property; I don't admit a legal sale, or that it was done legally.

Q. (Mr McGowan): Is this (producing) your return made by you on that execution?

A. Yes.

(The return was here marked Defendant's Exhibit 12.)

S. B. WAITE, recalled as a witness in behalf of defendant, testified substantially as follows:

DIRECT EXAMINATION.

(Mr McGowan): I will now read defendant's exhibit "11", notice of marshal's sale, which was introduced in connection with the evidence of Mr. Waite. (Reads)

DEFENDANT'S EXHIBIT "11."

Form No. 176.

Notice of Marshal's Sale.

United States of America, 4th Divn District of Alaska ss:

Public notice is hereby given, that by virtue of a writ of Fieri Facias (or execution), dated June 11th, 1912, A. D. 190.., issued out of the Commissioner's Court, for the United States for the 4th Division District of Alaska at Chatanika on a judgment rendered in said Court, on the 24th day of May, 1912, A. D. 190.., in favor of Jack McLain, plaintiff and against Sam Velik & Company, Defendants I have on this 14th day of June, 1912, A. D. 190.., levied upon the following described personal property, situated in the Fairbanks Recording District Territory of Alaska, to wit:

Forty (40) cords, more or less, of Birch and Spruce wood, one large tent, one cooking stove, all cooking utensils, provisions, etc. belonging to defendants; said property being now situate on what is known as the Sam Velik & Co. lease on the Chatanika Flats kust below the town of Chatanika. and that I will, accordingly, offer said personal property for sale, at public vendue to the highest and best bidder, for cash, on the 25th day of June, 1912 A. D., 190.., at 11 o'clock a. m., at the boiler house on said same Velik & Co. lease on the Chatanika Flats just below the town of Chatanika.

Dated at Fairbanks, Alaska, June 12, 1912, A. D. 190...

H. K. LOVE, U. S. Marshal,
4th Division, District of Alaska
By S. B. WAITE, Deputy.
.....Plaintiff's Attorney.

(Mr. McGowan): We shall also read the marshal's return made by Mr. Waite, which is marked Defendant's Exhibit "12", in the same case of McLean vs. Sam Vlik & Co. (Reads):

DEFENDANT'S EXHIBIT "12".

In the Commissioner's Court for the Territory of Alaska, Fourth Division.

Jack McLean Plaintiff, vs. Sam Velik & Co. Defendants—Marshal's Return on Execution.

I hereby certify and return that I received the attached writ of execution on the 12th day of June 1912, and that on the 14th day of June 1912, I duly executed the same by levying on the following described personal property situate on the lease of Sam Velik & Co. on the Chatanika Flats, just below the town of Chatanika as follows, to wit:

Forty (40) cords, more or less, of Birch and Spruce wood, one large tent, One cooking stove, all cooking utensils, provisions, etc., belonging to the defendants.

And by posting notices of sale in the following described places: one on the boiler house on the Sam Velik lease, one at the town of Chatanika, one on the Post Office at Cleary. And that thereafter on the 25th day of June 1912, the time set for said sale, I did sell to Paul Ringseth, he being the highest and best bidder, all of the right, title, and in-

terest of said Defendants, Sam Velik & Co. in and to the above described personal property for the sum of two hundred seventy five dollars ($275.00)

H. K. LOVE, U. S. Marshal,
By S. B. WAITE, Deputy.

Levy fee $4.00, Expenses $30.00, Commission $8.25.

CROSS EXAMINATION.

(By Mr. Stevens).

(Witness): I have examined the records of the marshal's office as to the amount of wood attached by the deputy marshal in the case of Ringseth vs. Sam Vlik & Co. and the record shows the same as my return, which was just read. I don't know the amount of wood attached under the attachment, I have not the record with me.

M. O. CARLSON, called as a witness in behalf of the defendant, being sworn, testified substantially as follows:

DIRECT EXAMINATION.

(By Mr. McGowan).

(Witness): I am a deputy marshal in this division; have been in the office of the marshal for several years last past as a deputy; my official title is office deputy marshal. I was such deputy during the entire year of 1912.

(Counsel hands to the witness Defendant's Exhibit 9, being the execution in the case of Ringseth vs. Vlik & Co.)

The return on that exhibit was made by me.

(The return was here offered in evidence, admitted, read to the jury, and marked Defendant's Exhibit 13, and is in the words and figures following:)

DEFENDANT'S EXHIBIT "13".

In the Justice's Court for the Fairbanks Precinct, Fourth Division, Territory of Alaska, at Chatanika.

United States of America, Territory of Alaska, Fairbanks Precinct, ss.—Marshal's Return on sale under Execution.

Paul Ringseth, Plaintiff vs. Sam Velik & Co. Defendants.

I hereby certify and return that on the 6th day of June, 1912, at 2 p. m. at the boiler house on the Sam Velik & Co. lease on the Chatanika Flats, the time and place appointed for sale in the Notice of Marshal's Sale posted on the 25th of May, 1912, in this case, I did offer for sale and did sell to the highest and best bidder for cash, to Paul Ringseth, for One Thousand seventy six and 25-100 ($1076.25 Dollars, he being the highest and best bidder attending said sale, and that being the highest sum then and there bid, all the right, title and interest of defendants, Sam Velik & Co. in and to One Hundred twenty three cords of the four foot birch wood now situate on said lease, said sale being at the rate of eight and 75-100 ($8.75) Dollars for each cord of wood sold, and said amount being in full for judgment and costs in the case.

Said wood being situate in the Fairbanks Record-

ing District, Territory of Alaska.

Dated at Fairbanks, Alaska, June 7th, 1912.

H. K. LOVE, United States Marshal

By M. O. CARLSON, Deputy.

Commission on sale $26.52, Expense $13.00, Total $39.52.

(Witness): I received this execution in my official capacity and went out and sold under it. I went out to Chatanika and measured the wood; the wood was measured on the 6th of June by myself, together with Mr Ringseth and also Mr McLean. I found 161 cords to be the correct measurement, and out of that 161 I sold in the case of Ringseth vs. Sam Vlik 123 cords. I sold the wood to Mr Ringseth at that time, 121 cords of wood there in a pile; two cords he admitted had been used and Mr Pavlovich was there at the time and said also that two cords had been used. So I sold Mr Ringseth 121 cords and he paid for the two cords that had been used, making 123 cords. It took Mr Ringseth, Mr McLean, and myself a couple of hours or more to measure this wood.

CROSS EXAMINATION.

(By Mr Stevens).

(Witness): I have a record in my office of the proceedings in this case, of what the marshal did. That record does not disclose how many cords of wood were attached by the marshal under the attachment in the Ringseth case; it just says "wood attached—"Wood, provisions, etc." It doesn't say any number of cords. The same is also true in regard

to our records in the case of McLean vs. Sam Vlik & Co; it doesn't say the number of cords attached. Our record does not say "a pile of wood near the boiler house."

(Mr McGowan): The record is here and I submit the record is the best evidence.

(Mr Stevens): The record is there, but if the witness knows,—this is only a brief matter,—to save time.

(Witness): I know Mr Peter Vidovich.

JOHN McLEAN, a witness called in behalf of the defendant, being sworn, testified substantially as follows:

DIRECT EXAMINATION.

(By Mr McGowan).

(The Witness): I am the plaintiff in the case of McLean vs. Sam Vlik that has been mentioned here today. I know when the attachments were levied on the property of Sam Vlik & Co., my attachment and the Ringseth attachment. They were levied on the evening of the 17th of May, the first one was levied half an hour or an hour before mine.

Q. Do you know about the time, whether it was before or after midnight or in the vicinity of midnight of the 17th?

A. I delivered the papers to Sam Weiss about 11 o'clock.

Q. Were you present on the ground at the time the deputy marshal made the levy?

A. No sir, I didn't go on the ground at all.

Q. When did you go to the ground?

A. The next morning.

Q. The next morning did you see any notices on the ground?

A. I did.

Q. What sort of Notices?

A. Attachment notices on the wood pile.

Q. In one case or two cases?

A. Two cases.

Q. Did you see Ringseth's name on one?

A. I did.

Q. And your own name on the other?

A. Yes sir.

(Witness): I saw notices on the wood pile; there were two or three notices stuck on the post there and one on the gallows frame. They were signed by an official; they were notices stuck up by the deputy marshal, Brown, that they attached so many cords of wood belonging to Sam Vlik & Co. The names of the parties were on them, Jack McLean against Sam Vlik & Co., and Paul Ringseth against Sam Vlik & Co. I saw these four notices on the morning of the 18th. I was on the ground of Sam Vlik & Co. on the 18th of May and remained there for six months afterwards and didn't go away from there until last January. I went on the ground of Sam Vlik & Co. on the 18th of May and went to work and we took over the lay ourselves, three or four of us. I worked there about two months after that. When I went there on the morning of the 18th of May, I have an idea about the quantity of

wood on the ground; in the big pile 160 cords and something; the marshal and I and Paul (meaning Ringseth) measured it. There was also about two or three cords of 16 ft wood, heavy poles, and a little pile of about 2 cords,—I mean 16 inch wood in the little pile. The wood was measured the day that Mr Carlson was up there; I cannot fix the month or day. Carlson, Ringseth, and myself measued the wood on that day and in the big pile there was about 162 cords.

Q. I don't care about the small pile. Now then, did you remain on the Sam Vlik & Co. lease within sight of all this property from the 18th day of May until the 25th day of May?

A. Yes.

Q. Were you there on the 24th day of May?

A. Yes.

Q. On the 25th day of May?

A. Yes sir.

Q. How long afterwards?

A. For two months afterwards.

Q. Were you still there in possession of this property?—at the time of the sale?

A. Yes sir, I was.

Q. What were you doing there during all of that time between the 16th of May and the 6th of June?

A. I was living there.

(Witness): Mr Ringseth and myself placed attachments on all this property and I went there on the 18th of May; I saw some notices on the ground; I don't remember if any number of cords

of wood was referred to in these notices.

Q. Now then, you went there for what purpose? Do you remember that? What did you go there for? On that Sam Vlik & Co. lease? Do you understand what I mean?

A. Yes I guess I do?

Q. Then answer, please.

A. Paul said he was supposed to look after this wood. I said: "I am working here all the time mining; I am supposed to look after my own part of it; at the same time I will attend to yours. That was all that was said.

(Witness): On the 6th day of June and also on the 26th day of June, during the month of June 1912, I was living in the vicinity of the Chatanika Flats,—was employed in mining operations—and during all that time I knew the market value of wood, of 4 ft. birch wood, at Chatanika, where the wood in controversy in this case was situate, and the market value of wood during that time was $10.00 a cord.

SAMUEL R. WEISS, recalled as a witness in behalf of defendant, testified substantially as follows:

DIRECT EXAMINATION.

(By Mr McGowan):

(Witness): During the month of June 1912, and between the 6th and the 25th of June, I was engaged in mining at Chatanika Flats and I know this wood in controversy in this case, and also the market value of wood. This kind of wood, at the

place where the wood in controversy in this case was located, I bid $8.50 for it, that is all I considered it worth at that time. I bid that for it. It was worth $10.00 a cord on the Flats, but it would have cost more than $2.00 a cord to move it from the place at which it was located. At the place where the wood in controversy in this case was located at that time its market value was $8.50 a cord; that is all I bid on it and I needed wood at that time.

CROSS EXAMINATION.

(By Mr Stevens).

(Witness): This wood was located at a place about 800 yards from the place where I was conducting mining operations. I didn't consider the value of the wood was anything there at the place where it was located, for the reason that there was nothing there at the place where they were mining. At times it costs more to move wood in the summer time than it does in the winter; it is slower work when it has to be loaded on a wagon than when you load it on a bobsled; it costs more to move this wood in summer than in winter. Wood to be used right on the premises is worth more than if you had to move it. I would consider $10.00 a cord a fair market price for that wood, if you had use for it where it was located.

Q. Suppose you wanted to work this particular ground and you had to move the wood on there in the month of June, it would cost you $12.00 or $15.00 a cord to buy it and get it there?

A. No.

Q. How much would it cost?

A. $10.00, instead of $12.00 or $15.00.

(Witness): I bid on that wood, I think I was next to the highest bidder on it; I bid $8.50 a cord, and I would have to move it about 800 yards and I considered that was all it was worth. It does not necessarily cost more to move wood from the woods in the summer time than in the winter. I am moving 1500 cords this summer for $7.00 a cord.

REDIRECT EXAMINATION.

(By Mr McGowan).

(Witness): The wood in controversy in this case was put on the claim in question in the winter time. My testimony with reference to the value of wood as given by me for the month of June would also apply to the 24th of May 1912.

PAUL RINGSETH, a witness called in behalf of defendant, being sworn, testified substantially as follows:

DIRECT EXAMINATION.

(By Mr McGowan).

(Witness): I remember the day that I swore the attachment out in the case of myself vs. Sam Vlik & Co. I gave the writ of attachment and the other papers that the commissioner gave me to Lysle Brown, the deputy marshal. Of my own knowledge he went down to serve them papers. I went down to the Sam Vlik & Co. lay the next morning. I seen the notices posted. I think it was on a post or a mast or something. Also two notices right on the end of

the wood pile. I didn't see Mr Pavlovich, the plaintiff in this case there on that day: I don't know where he was. I judge I went down there about ten o'clock in the morning and stayed quite a little while there that day. In the presence of the marshal and the commissioner I was appointed custodian. Sam Weiss, the commissioner, appointed me. Mr Brown, Mr Weiss, and me were there together when it was talked over and I was appointed by either Mr Brown or Mr Weiss, I can't remember now. After this conversation and on the next morning about ten o'clock I went down there and we talked over what to do. I stayed on this ground probably half an hour, sizing things up, sizing up the wood pile, the tools, and anything that was there belonging to the laymen. I don't remember reading the whole of the notice that the marshal put up there, but I read part of it. By these notices I seen that the property of Sam Vlik & Co. was attached. Wood and utensils and grub, and a tent, I think. The number of cords referred to was 200 cords more or less, I think. That was in the notice on that day as far as I can recollect. I stayed there two or three hours. Mr McLean was there at that time; when I went away I left McLean there on the ground. We were talking about the property, the wood, taking fire, or somebody putting fire to it, and I told him to see that it didn't catch fire. I left McLean there. I stayed there two or three hours, and as far I know he stayed there afterwards. I know he was there everyday. I know McLean was there every day for

ten or twelve days afterwards, because I went down there myself every day. I went down to that claim on the Sam Vlik lease every day after the attachment for about ten or twelve days afterwards, I just went down to see how things were going on. My store, I should think, is about 1500 ft. or something like that from the Sam Vlik lay. I can see this woodpile from the town of Chatanika, where my store is. I think I can see it from a point about 50 ft. from my store. I know I seen the woodpile every day and probably several times a day after the attachment was put on. On the 24th of May 1912 I was on the Sam Vlik lease; that was the day the judgment was rendered. I was also there on the 25th of May. I didn't see Mr Pavlovich, the plaintiff, on the ground on either one of those days. Mr McLean was on the ground and a fellow named O'Brien, he was mining there, and there were several men working on the claim for wages under my direction for eight or ten days. I am not positive whether those men were still there on the 24th and 25th of May, but I know there were some men there then. I measured the woodon the day of the marshal's sale, the 6th of June; there was 160 or 161 cords. There is a dispute as to one cord in the measurement. Mr McLean and Mr Carlson measured the wood and when we got through there was a little dispute between the three of us about one cord; I claimed that it was a little bit less than they had it. On the 18th of May, after the attachment was made, there was probably a couple of

cords more than when we measured. Mr McLean used them in the boiler on that lay under my directions. On the day the attachment was levied, so far as I know, there was between 100 and 163 cords on the ground. I am familiar with the market value of wood in that vicinity on the 24th of May 1912, also during the entire month of June 1912. There could not be any diffeence in the market value between those times. The market value of wood of this character was $8.75 or $9.00 at the most. I bought all that wood at the execution sale. On the 18th of May 1912 I didn't see the plaintiff, Mr Pavlovich, on the Sam Vlik lay. I saw Mr Pavlovich for the first time on the day of the marshal's sale, the sixth of June. There were two marshal's sales; the first was on the 6th of June, at which time 123 cords of wood was sold; the next sale was eight or ten days later and was in the McLean suit; the first sale was in my suit. At the second sale about 40 cords of wood were sold, which was bought by me; I bought the wood at both sales. There were other persons present at both sales, at the first sale there was quite a few present, eight or ten men, at the second there was not so many, four or five. The first time I saw Pavlovich was at the first sale; to my knowledge he was not present at the second sale. When I went to the Sam Vlik lay on the 19th of May I saw some notices there; I didn't pay much attention to them. Those notices were not there on the day before, on the 18th, when I was there. I know of a small pile of wood there; it is a bunch

of wood and timbers right close to the dump box, and lying in another direction from this wood altogether (meaning the wood in controversy), and I never saw any notices of any kind or description up on that pile. There was a bunch of 16 inch fire wood, close to the boiler house. I understood it had been piled up for the mess house. There was a couple of cords in that pile and no notice on it.

CROSS EXAMINATION.

(By Mr Stevens).

(The Witness): Between the 18th of May and the 25th of May I resided at my store at Chatanika and I slept at the store.

DEFENDANT RESTS.

PETER VIDOVICH, a witness called in behalf of plaintiff in rebuttal, being sworn, testified substantially as follows:

DIRECT EXAMINATION.

(By Mr Stevens.)

(Witness): My name is Peter Vidovich and I am acquainted with the plaintiff in this case.

Q. Mr Vidovich, do you remember being in judge Day's office some time this last summer of 1912, wherein judge Day was present and Mr Brown, the deputy marshal, was present, and you were talking about this particular case and the attachment of the wood in the Ringseth case and in the McLean case, against Sam Vlik & Co.?

A. I was, yes sir.

Q. When I say Mr Brown, I mean the deputy that made the levy under the attachment; you know Mr Brown?

A. I do.

Q. I will ask you to state, Mr Vidovich, whether at that time and place, and in the presence of you and Mr Brown and Mr Day, that Mr Brown, referring to this matter, stated to you and Mr Day in substance as follows: That you were talking about this attachment, and that Mr Brown stated to judge Day and to you in substance that he, Brown, only attached the 3 or 3½ cords of wood, and that was the small pile; and that was where he, Brown, placed his notices of attachment,—on the small pile; and that that small pile was all the wood that he, Brown, attached?

(Mr Clark): We object as the proper foundation has not been laid, as to the time and place or as to the conversation.

(The Court): Objection overruled.

Ex. 8—(Defendant excepts; exception allowed).

Q. (Mr Stevens): You may answer that question as to whether Mr Brown said that, that day in the presence of judge Day, in substance as I have asked the question.

A. Yes sir.

Q. He did?

A. He did,

Q. Didn't Mr Brown say to you, or to judge Day in your presence at that time, that, when this case came to trial that he would go on the witness stand

and swear to that, that only 3½ cords of wood were attached by him?

(Mr McGowan): We object to that on the ground that the proper foundation has not been laid, as to the time or place or persons present.

(The Court): Objection overruled.

(Ex. 9—(Defendants except; exception allowed.)

A. He did say so.

CROSS EXAMINATION.

(By Mr McGowan).

(Witness): All this conversation was at one time; I had just one conversation on the 21st of May at Mr Day's office, and that is the only conversation that I had with Mr Brown about this. This conversation lasted probably four or five minutes. I found Mr Brown in Mr Day's office when I went in there; Mr Day sent for me to come up there; they called me. Mr Day sent for me, because Mr Pavlovich asked for me to be interpreter. I am not interested in this case; I am not financing it; I only translated to Mr Pavlovich; I have no interest in the matter at all. I am sure this transaction took place on the 21st of May. Notices were not spoken about at all. I first heard about this trouble when Mr Pavlovich came to me at the "Fairbanks" corner, between 12 o'clock and 1 o'clock on the 19th of May, and he wanted me to come with him to see the judge of the court.

H. A. DAY, a witness called for the plaintiff in rebuttal, being sworn, testified substantially as follows:

DIRECT EXAMINATION.

(By Mr Stevens): Q. Mr Day, you may state to the jury whether or not, on the 19th day of May 1912, you, in company with Mr Peter Vidovich, went to the United States marshal's office in Fairbanks, Alaska, and then and there had a conversation with Mr Carlson, the deputy United States marshal, concerning the suit and the attachment therein, in the case of Paul Ringseth against Sam Vlik & Co., in the commissioner's court at Chatanika, before Sam Weiss, justice of the peace.

(Mr Clark): We object as irrelevant, incompetent, and immaterial, and not binding on defendants.

(The Court): Overruled.

Ex. 10.—(Defendant excepts; exception allowed).

A. Yes, we were there, I wouldn't swear to the date positively, but it was about that time.

Q. Mr Day, I will ask you whether or not, in the presence of you and Mr Peter Vidovich only, that Mr Brown, United States deputy marshal, at that time in your office, some time during the summer on the date which he testified to, when you were talking about this particular case of Paul Ringseth vs. Sam Vlik & Co. and the attachment thereunder sued out in the case before commissioner Weiss of Chatanika in the Fairbanks Precinct, whether or not Mr Brown said to you in substance that he, Brown, only attached 3 or 3½ cords fo wood under this attachment, and that that was the small pile of wood, and that that was the place,—on the small pile of

wood,—where he, Brown, posted the notice of attachment, and that that was all the wood that he, Brown, attached in that suit. I will ask you whether or not that was the substance of what Mr Brown said to you and Mr Vidovich at that time and place.

(Mr Clark): We object to that, as no proper foundation has been laid.

(The Court): Overruled.

Ex. 11.—(Defendant excepts; exception allowed.)

A. He stated substantially that.

Q. (Mr Stevens): I will ask you to state whether or not, at the same place, he stated to you in the presence of Peter Vidovich, that he would so testify at the trial of this case, in substance.

(Mr Clark): Same objection.

(Objection overruled; defendants except; exception allowed.)

A. He most certainly did.

CROSS EXAMINATION.

(By Mr McGowan).

(Witness): I am the attorney for the plaintiff in this case and was the only attorney of record until the trial commenced. I took this case under a contingent arrangement with the plaintiff and have an interest in the financial outcome of this case. I don't remember whether I called Mr Brown to my office or not. I am not sure that I telephoned Mr Vidovich to come up to listen to the conversation with Mr Brown. I know that I had the two of them there together. I think Mr Vidovich was in my office longer than four or five minutes, and I think

he took part in the conversation. I am not positive. I believe he went away and left Brown there with me. I can not state the date on which this conversation took place. I believe I heard about this trouble before the 18th of May. Mr Pavlovich hadn't telephoned to me but I might have heard those things before; I might have heard of these troubles in the Sam Vlik attachment on the street or anywhere else.

TESTIMONY CLOSED.

DEFENDANT'S MOTION FOR INSTRUCTED VERDICT.

(Mr Clark): We move the Court at this time to instruct the jury in this case to bring in a verdict against the plaintiff and in favor of the defendant upon the grounds: First, That the plaintiff has failed to prove his case as alleged in his complaint. Second: That it appears from the evidence in this case that the alleged bill of sale, relied upon by the plaintiff in this case as the foundation of his case, is nothing more or less than a chattel mortgage, which is void under the law of Alaska, in that: 1st, it was not executed with the formalities required to constitute a valid chattel mortgage where the possession did not change; and 2nd, on the ground that no possession of the property, no actual change of possession of the property, ever took place after the chattel mortgage was given. Further, that it appears conclusively from the testimony—and there is no

conflict in the testimony,—that the property in controversy was in the possession of the United States marshal at the time that the plaintiff in this case alleges he was put in possession of the property or went into possession of the property. Further, it is alleged in the complaint, and is the very basis of their complaint, that, on the 24th day of May 1912, and for a long time prior thereto, plaintiff was the owner and in the actual possession of the property described in the complaint; and it conclusively appears from the evidence that he was not in possession of the property on the 24th, and had not been in possession of the property prior thereto at any time, but that, on the contrary, it was in the possession of the marshal; and granting, for the sake of the motion, that the lien of the Ringseth attachment was lost when he failed to have it foreclosed in the judgment, that plaintiff never went into possession after that lien was lost, never made any attempt to go into possession, and never was in possession of the property at any time, either actively or constructively, before the commencement of this suit, or at any time after he had delivered it to Sam Vlik & Co.

(The Court): According to the view I take of it, I think those are the questions to be submitted to the jury. I will reserve my decision on the motion until I hear what you have to say on instructions. If you have any instructions you may present them now.

(The Court): There was a motion for directed verdict submitted by defendants; that may be denied.

Ex. 12.—(Mr. McGowan): We save an exception.

(Exception allowed.)

Thereupon the defendant requested certain instructions, numbered I to XVII inclusive, part of which were given and the remainder of which were refused; to which refusals the defendant then and there excepted, as is more fully shown by his exceptions numbered 1 to 14 inclusive; and thereupon the Court instructed the jury, as is more fully shown by the instructions hereinafter set out, numbered from I to XXVIII inclusive, to a part of which instructions the defendant thereupon excepted, as is shown by his exceptions thereto, numbered 1 to 9 inclusive, following the instructions of the Court; and all of which more fully appears from "Requested Instructions, Instructions, and Exceptions", duly served and filed on the 2nd day of May 1913, and which is in the words and figures following:

[Title of Court and Cause.]

Defendant's Requested Instructions to Jury.

Now comes the defendant and requests the Court to instruct the Jury in the above entitled case as follows, to wit:

I.—You are instructed that the plaintiff in this case alleges that, on the 24th day of May 1912, and for a long time prior thereto, the plaintiff was the owner, and in the actual possession, and entitled to the possession, and still is the owner and entitled to the possession of the wood in controversy in this action, and that, on the 24th day of May 1912, the defendant unlawfully took said wood from the pos-

session of the plaintiff and converted it to his own use.

These allegations of the complaint are denied by the defendant in his answer, and this being so, it is incumbent on the plaintiff to prove, by a preponderance of the evidence that, on the 24th day of May 1912, and for a long time prior thereto, he was the owner, in the actual possession and entitled to the possession, and still is the owner and entitled to the possession of the wood in question; and if he does not establish his ownership, as above alleged, by a preponderance of the evidence, then your verdict must be for the defendant.

II.--You are instructed that it is admitted by the pleadings that the actions of Ringseth vs. Sam Vlik & Co., and McLean vs. Sam Vlik & Co., were commenced on the 17th day of May 1912, and that such proceedings were had in both said actions that attachments were issued and delivered to the United States Marshal for service, and that the summons and writ of attachment in both said actions were served by one of the deputies of the defendant prior to the execution of the bill of sale offered in evidence in this case, wherein it is claimed by the plaintiff that the wood in controversy was sold to the plaintiff.

It is contended by the defendant in this action that the alleged bill of sale, given by Vlik & Co. to the plaintiff in this action on the 18th day of May 1912, was, in reality, a chattel mortgage; and if you find from the evidence that said alleged bill of sale was not a bill of sale, but was intended as, and is, a chattel

mortgage, then you are instructed that, under the laws of Alaska, a mortgage of personal property is void, as against the creditors of the mortgagor and subsequent purchasers and encumbrancers of the property in good faith for value, unless: (1) the possession of such property be delivered to and retained by the mortgagee, or (2) the mortgage provide that the property may remain in the possession of the mortgagor, and be accompanied by an affidavit of all the parties thereto, to the effect that the same is made in good faith, to secure the amount named therein, and without any design to hinder, delay, or defraud creditors, and be acknowledged and filed in the office of the Recorder of the precinct in which the property is situate, and be indexed in the record of chattel mortgages, and the original thereof retained by the said Recorder for the examination of all persons who may be interested therein.

III.—I instruct you that the possession of said mortgaged property, as meant by the foregoing provisions, is an actual possession thereof, adverse to all the world save said mortgagee. And if you find, from the evidence in this case, that the bill of sale offered by the plaintiff was intended as a chattel mortgage, then I instruct you that said mortgage is void as to attaching creditors in good faith for value, unless the plaintiff in this action entered into the actual possession of said property described in said alleged bill of sale and retained possesson thereof. (Modified by the Court by the addition of the words: "Or was prevented from so doing by the possession or

acts of the defendant.")

IV.—I instruct you that, if you find that said alleged bill of sale, offered by the plaintiff in this case, was, in reality, intended as a chattel mortgage, and was not filed and indexed as such in the office of the Recorder, as required by law, then said mortgage is void and of no effect.

V.—I instruct you that possession of personal property can not be in two persons at the same time whose interests are in conflict with each other, and, if you find from the evidence that the defendant in this action was in possession of the wood described in plaintiff's complint, from the 17th day of May 1912 up to and including the 24th day of May 1912, then the plaintiff in this action was not, and could not be, in possession of said property or any part thereof, as alleged in his complaint.

VI.—I instruct you that, in order for the plaintiff in this action to have acquired possession of the wood in controversy, after the entry of the judgments in the cases of Ringseth vs. Vlik & Co., and McLean vs. Vlik & Co., on the 24th day of May 1912, it was necessary for him to take such actual possession thereof as would be notice to the world, and to this defendant in particular, that he was claiming and asserting a claim thereto, and, if you find that the plaintiff did not take such possession, between the time of the rendition of such judgments on the 24th day of May 1912, and prior to the levy of the execution issued out of the Commissioner's Court at Chatanika, in the cases above men-

tioned, then the lien of said judgments, acquired by the levy of such executions, is paramount and superior to any possession claimed by the plaintiff in this action, and the United States Marshal had the right to sell the property under the writs of execution in those cases.

VII.—You are instructed that, if at the time when the defendant levied the executions above mentioned, on the wood in controversy herein, the plaintiff herein was not in the actual possession of said wood, then the levy on said executions was properly made, and the defendant was entitled to hold said property thereunder.

VIII.—You are instructed that any transfer of property by an insolvent debtor, while litigation is pending or while he is in failing circumstances, whereby he attempts to prefer any given creditor, is a badge of fraud, and should be considered by you in determining whether or not said alleged bill of sale from Vlik & Co. to the plaintiff was made in good faith; and if you believe, from the evidence in this case, that the alleged bill of sale, offered by the plaintiff, was made by Sam Vlik & Co. to the plaintiff with the understanding that the same was made for the purpose of protecting the plaintiff, as against other creditors of Sam Vlik & Co., then I instruct you that the said transfer was fraudulent as against the plaintiffs in said actions, namely, as against Paul Ringseth and Jack McLean, and if you so find, then your verdict in this action should be for the defendant.

IX.—You are further instructed that every conveyance or assignment in writing, or otherwise, of any interest in lands or things in action, or any rents or profits issuing therefrom, and every charge on lands, goods, or things in action, or on the rents or profits thereof, made by any person with intent to hinder, delay, or defraud creditors, or other persons, of their lawful suits, demands, debts, or damages, as against the persons so hindered, delayed, or defrauded, is void, and if you find, from the evidence in this case, that Sam Vlik & Co. executed the bill of sale produced by plaintiff in this action with such intent, then your verdict should be for the defendant.

X.—You are further instructed that, if you find, from the evidence in this case, that the defendant was in the lawful possession of the wood in controversy, under and by virtue of the writs of attachment mentioned herein, from the 17th day of May 1912 up to and including the 24th day of May 1912, then, even though the attachment may have expired by operation of law, the possession was that of the defendant until said date, and if the plaintiff did not either enter into possession or take possession of said wood on or before the 25th day of May 1912, when the execution in the case of Ringseth vs. Vlik & Co. was levied, then the wood in controversy was in the legal possession of the United States Marshal, as alleged in defendant's answer herein.

XI.—You are also instructed that the judgments in the cases of Ringseth vs. Sam Vlik & Co and McLean vs. Sam Vlik & Co. are valid judgments for the pur-

poses of this case, and are binding on the plaintiff, and that the executions issued thereunder and said judgments kept in force the attachments in said actions, and the property levied on thereunder was at all times subject to the executions issued in said actions, and the plaintiff in said actions, by virtue of said attachments, had valid liens on the wood in controversy from the 18th day of May 1912 until the time when the said property was sold under the executions issued therein.

XII.—You are instructed that the attachment liens of Ringseth vs. Vlik & Co. and McLean vs. Vlik & Co. were not lost, destroyed, waived, or abandoned by the plaintiff in said actions, by reason of the failure of the Commissioner, in whose Court said actions were pending, to insert in said judgments an order foreclosing said liens, and that the words "Let execution issue" were a sufficient order of foreclosure.

XIII.—You are instructed that the defendant, in his answer, alleges that Sam Vlik & Co. were indebted to Paul Ringseth and to Jack McLean in large sums of money, and that, on or about the 18th day of May 1912, the said Vlik & Co., with intend to hinder, delay, and defraud their creditors, and particularly the said Ringseth and the said McLean, made and executed a conveyance or bill of sale, wherein and whereby they attempted to sell to the plaintiff herein the wood in controversy in this action, for a fictitious consideration of two thousand dollars, with the design thereby to defraud the said Ringseth and the said McLean of their lawful claims,

demands, and suits, and that said bill of sale was made with the sole purpose and design of hindering, delaying, and defrauding the creditors of said Vlik & Co, and particularly said Ringseth and said McLean, and that the plaintiff did not enter into possession of said wood at any time; and if you find that the evidence in this case sustains these allegations, (Modified by the Court by addition of the words: "And if you also find that the plaintiff had previous knowledge of the fraudulent intent of Vlik & Co.") then your verdict should be for the defendant.

XIV.—You are instructed that, if you find from the evidence that said alleged bill of sale, given to the plaintiff in this action on the 18th day of May 1912, was in reality a chattel mortgage, and that said plaintiff actually took possession of said property under said chattel mortgage, and actually held possession thereof, when said property was taken under the executions by the defendant in this action, in the case of Ringseth vs. Vlik & Co. and McLean vs. Vlik & Co., you can not, under any circumstances, find a verdict in favor of the plaintiff in this action for a greater sum than the amount of the indebtedness which said alleged mortgage was given to secure; and, if you find the foregoing facts to be true, you can not, under any consideration, find for said plaintiff in a sum greater than the actual market value of the wood so seized by the defendant, as proved by the evidence in this case.

XV.—You are further instructed that, if you find,

from the evidence in this case, that the bill of sale produced in evidence by the plaintiff was given with the intent to hinder, delay, or defraud said Paul Ringseth and said Jack McLean, or either of them, in the collection of their just debts and demands, then your verdict must be for the defendant.

XVI.—You are further instructed that the evidence in this case conclusively shows that Paul Ringseth and Jack McLean are judgment creditors of Sam Vlik & Co., and that, if the bill of sale offered by the plaintiff was made for the purpose of hindering and delaying them in the collection of their just debts and demands, then your verdict must be in favor of the defendant.

XVII.—You are instructed that, if you should find, from the evidence, that the possession of the defendant under the attachment liens above referred to was lost by the failure of the defendant to have the attachment foreclosed in the judgments above mentioned, and that thereafter the defendant acquired a valid lien under the executions hereinbefore mentioned, then his possession, so obtained, would be valid, unless the plaintiff had actual possession and control of said personal property.

Ex. 13.—1. The Court erred in refusing to give that part of requested instruction No. II, beginning with the words "Or (2) the mortgage", and the remainder of said instruction, to which ruling the defendant then and there excepted.

Ex. 14.—2. The Court erred in modifying requested instruction No. III, by adding at the end thereof the words: "Or was prevented from so doing by the possession or acts of the defendant", to which modification defendant then and there excepted.

Ex. 15.—3. The Court erred in refusing to give to the Jury requested instruction No. IV, to which ruling the defendant then and there excepted.

Ex. 16.—4. The Court erred in refusing to give to the Jury requested instruction No. VI, to which ruling the defendant then and there excepted.

Ex. 17.—5. The Court erred in refusing to give to the Jury requested instruction No. VII, to which ruling the defendant then and there excepted.

Ex. 18.—6. The Court erred in refusing to give to the Jury that portion of requested instruction No. VIII which reads as follows: "And if you believe, from the evidence in this case, that the alleged bill of sale, offered by the plaintiff, was made by Sam Vlik & Co. to the plaintiff with the understanding that the same was made for the purpose of protecting the plaintiff, as against other creditors of Sam Vlik & Co., then I instruct you that the said transfer was fraudulent as against the plaintiffs in said actions, namely, as against Paul Ringseth and Jack McLean, and, if you so find, then your verdict in this action should be for the defendant," to which ruling the defendant then and there excepted.

Ex. 19.—7. The Court erred in refusing to give to the Jury requested instruction No. IX, to which ruling the defendant then and there excepted.

Ex. 20.—8. The Court erred in refusing to give to the Jury requested instruction No. X, to which ruling the defendant then and there excepted.

Ex. 21.—9. The Court erred in refusing to give to the Jury requested instruction No. XI, to which ruling the defendant then and there excepted.

Ex. 22.—10.—The Court erred in refusing to give to the Jury requested instruction No. XII, to which ruling the defendant then and there excepted.

Ex. 23.—11. The Court erred in modifying requested instruction No. XIII, by inserting the words: "And if you also find that the plaintiff had previous knowledge of the fraudulent intent of Vlik & Co.", to which modification the defendant then and there excepted.

Ex. 24.—12. The Court erred in refusing to give to the Jury requested instruction No. XIV, to which ruling the defendant then and there excepted.

Ex. 25.—13. The Court erred in refusing to give to the Jury requested instruction No. XVI, to which ruling the defendant then and there excepted.

Ex. 26.—14. The Court erred in refusing to give to the Jury requested instruction No. XVII, to which ruling the defendant then and there excepted.

The Court thereupon instructed the Jury as follows:

I.

Gentlemen of the Jury:

The plaintiff in this case in his complaint alleges that on and prior to May 24th, 1912, he was the owner and in the actual possession and entitled to

the possession and still is the owner and entitled to the possession of one hundred and ninety three cords of four foot birch wood on Discovery claim on the Chatanika Flats, in this precinct, worth twelve dollars per cord; that on said day the defendant unlawfully converted the same to his use, to plaintiff's damage in the sum of twenty six hundred and sixteen dollars.

II.

These allegations are denied by the defendant in his answer.

III.

And it is therefore incumbent upon the plaintiff to prove by a preponderance of the evidence the material allegations of the complaint, that is, that on or about the date alleged he was such owner and entitled to the possession of the wood in question.

IV.

Unless such allegations are so established, then your verdict should be for the defendant.

V.

The defendant also alleges in his answer, the right to the possession by virtue of certain attachments, and levies under said attachments, and writs of execution issued in two cases pending in the Commissioner's Court at Chatanika.

VI.

You are instructed that it is admitted by the pleadings that the action of Ringseth vs. Sam Vlik & Company, and McLean vs. Sam Vlik & Company were commenced on the 17th day of May 1912, and

that such proceedings were had in both said actions that attachments were issued and delivered to the United States Marshal for service, and summonses and writs of attachment in both actions were served by one of the deputies of the defendant prior to the execution of the bill of sale offered in evidence in this action wherein it is claimed by the plaintiff that the wood in controversy was sold to the plaintiff.

VII.

It is contended by the defendant in this action that this alleged bill of sale given by Vlik & Company to plaintiff in this action on the 18th day of May, 1912, was in reality a chattel mortgage. And, if you find from the evidence that said bill of sale was not a bill of sale but was executed as and is a chattel mortgage, then you are instructed that under the laws of Alaska a mortgage of personal property is void as against the creditors of the mortgagor, and subsequent purchasers and incumbrancers of the property in good faith for value, unless the possession of the property be delivered to and retained by the mortgagee, or the mortgage be executed with certain formalities required by law—which it is not contended was done in this case.

VIII.

I instruct you that the possession of such mortgaged property as meant by the foregoing provision is an actual possession thereof adverse to all the world save the mortgagee.

IX.

And, if you find from the evidence in this case

that the bill of sale offered by the plaintiff was intended as a chattel mortgage, then I instruct you that the said mortgage is void as to prior creditors in good faith for value, unless the plaintiff in the action entered into the actual possession of such property and retained possession thereof, or unless you find that he was prevented from so doing by the possession or acts of the defendant.

X.

I instruct you that possession of personal property can not be in two persons at the same time whose interests are in conflict with each other. And if you find from the evidence that the defendant in this action was in possession of the wood described in plaintiff's complaint on the 17th day of May 1912, then the plaintiff in this action was not and could not be in possession of the property as alleged in his complaint.

XI.

You are instructed that where absolute ownership is claimed and only special property in the thing claimed is shown—as would be the case if the plaintiff instead of showing absolute ownership should show a conditional sale, or this bill of sale operated as a chattel mortgage—that that is sufficient to sustain a recovery provided that it also appear that the plaintiff has the right of immediate possession of the property.

XII.

You are instructed that property may be sold or mortgaged subject to the lien of an attachment, and

the sale or mortgage becomes absolute when the lien of the attachment is removed or lost.

XIII.

You are instructed that the judgments given in the Commissioner's Court at Chatanika on May 24, 1912, that have been introduced in evidence in this case, did not contain any order that the property attached theretofore in the actions in which said judgments were given should be sold to satisfy the demands of the plaintiffs in said actions, and that therefore as a matter of law said plaintiffs waived and lost any lien theretofore secured upon the property in question by reason of the attachments theretofore issued in said actions, and that the defendant was not therefore longer entitled to the possession of said property under said writs of attachment, if you should find that they had been theretofore duly levied.

XIV.

And you are further instructed that if you find that the plaintiff had become the owner of said wood and entitled to the immediate possession thereof prior to the date of the levy thereon by the defendant under the writs of execution (evidence of which has been given before you) by reason of the bill of sale to the plaintiff from Sam Vlik & Company, then the defendant was without right to hold such property inder such levies, or to sell or dispose of the same.

XV.

You are instructed that if you find by a prepon-

derance of evidence that on May 18th, 1912, Sam Vlik & Company was indebted to the plaintiff in the sum of seventeen hundred and twenty dollars, or any other substantial sum, and, that in consideration of such indebtedness, and without intent to hinder, delay, or defraud the creditors of said Vlik & Company, or without previous knowledge of such intent on the part of the plaintiff, then executed and delivered to the plaintiff the bill of sale of said property; and, if you further find by a preponderance of evidence that the plaintiff thereupon acquired the right to the immediate possession of said property, and that plaintiff did on or about May 18, or at any time before the levy of the executions herein mentioned, take possession of said wood, or notify the defendant of his claim of ownership and right of possession thereof, or that the defendant was otherwise notified of such ownership and right of possession, then you are instructed that the levy or attempted levy under such writs of execution was without authority, and that the defendant did not thereby secure any right to hold such wood under such levy, or to sell the same thereunder.

XVI.

You are instructed that every conveyance or assignment in writing or otherwise of any goods or personal property, or any estate or interest therein, made with the intent to hinder, delay or defraud creditors of their lawful suits, demands or debts, as against persons so hindered, delayed or defrauded are void; also that all conveyances and transfers of

assignment, either verbal or written, of goods and chattels made in trust for the person making the same are void against creditors, existing or subsequent, of such person. And you are therefore instructed that if you find that the bill of sale given on May 18th, 1912, by Vlik & Company to the plaintiff was made with the intent on the part of said Vlik & Company to hinder, delay or defraud either said Ringseth or said McLean of their lawful suits, demands, or debts, or if you shall find that such bill of sale was made in trust for the said Vlik & Company then such bill of sale is void as against the defendant, provided that you further find that the plaintiff had previous knowledge of the fraudulent intent of said Vlik & Co.

XVII.

You are further instructed that the question of fraudulent intent is a question of fact to be decided by you from all the evidence given in this case.

XVIII.

You are instructed that any transfer of property by an insolvent debtor, made while litigation is pending or while he is in failing circumstances, whereby he attempts a preference among ordinary creditors is a badge of fraud, and may be considered by you in determining whether or not the alleged bill of sale from Vlik & Company to the plaintiff was made in good faith.

XIX.

You are instructed that in his answer the defendant alleges that Sam Vlik & Company were indebted

to Paul Ringseth and to Jack McLean in large sums of money, and that on or about the 18th day of May 1912, the said Vlik & Company, with intent to hinder, delay and defraud their creditors, and particularly the said Ringseth and the said McLean, made and executed a conveyance or bill of sale to the plaintiff whereby they attempted to sell to the plaintiff all of the wood in controversy in this case for a fictitious consideration of two thousand dollars, with the design thereby to defraud the said Ringseth and the said McLean of their lawful claims, demands and suits, and that said bill of sale was made with the sole purpose and design of hindering, delaying and defrauding the creditors of said Sam Vlik & Company and particularly the said Ringseth and said McLean, and that the plaintiff did not enter into possession of said wood at any time; and if you find that the evidence in this case sustains these allegations, and if you also find that the plaintiff had previous knowledge of the fraudulent intent of Vlik & Company, then your verdict should be for the defendant.

XX.

You are instructed that if you find from the evidence that said alleged bill of sale given to plaintiff in this action on the 18th day of May 1912, was in reality a chattel mortgage, and that the plaintiff actually took possession of the property under said chattel mortgage and actually held possession thereof when said property was taken under execution by the defendant in this action in the case of Paul Ringseth

vs. Sam Vlik and Company and Jack McLean vs. Sam Vlik & Company, you can not under such circumstances find a verdict in favor of the plaintiff in this action for a greater sum than the amount which said alleged mortgage was given to secure; and, if you find the foregoing facts to be true, you can not under any circumstances find for the plaintiff in a sum greater than the actual market value of the wood so seized by defendant at the time and place of such seizure as proved by the evidence in this case.

XXI.

You are instructed that you are the sole judges of all questions of fact, and of the effect of evidence, and the weight to be given to the testimony of the witnesses, but your power in this respect is not arbitrary, but is to be exercised by you with legal discretion and in subordination to the rules of evidence laid down in these instructions.

XXII.

In considering the evidence in this case, you are not bound to find a verdict in conformity with the declarations or testimony of any number of witnesses when their evidence does not bring conviction to your minds, against a lesser number of witnesses or against a presumption or other evidence which is satisfying to your minds.

XXIII.

A witness willfully false in one part of his testimony may be distrusted in others.

XXIV.

Taht in determining the credit you will give to a

witness, and the weight and value you will attach to his testimony, you should take into consideration the demeanor and appearance of the witness up on the stand, the interest he has (if any) in the result of the trial, the motive he has in testifying (if any is shown), his relations to or feeling for or against any of the parties to the case, the probability or improbability of such witness' statements, the opportunity he had to observe and to be informed as to the matters in respect to which he gave testimony before you, and the inclination he evinces, in your judgment, to tell the truth or otherwise as to the matters wihin his knowledge.

XXV.

It is your duty to give to the testimony of each and all of the witnesses appearing before you such credit as you consider they are justly entitled to receive.

XXVI.

In this case you are instructed that the evidence is to be estimated, not only by its intrinsic weight, but also by the evidence which it is within the power of one side to produce and of the other to contradict, therefore, if the weaker and less satisfactory evidence is offered, when it appears that stronger and more satisfactory evidence was within the power of the party offering the same, then the evidence so offered should be viewed with distrust.

XXVIII.

You are instructed that you should consider no evidence sought to be introduced, but excluded by the

Court, nor should you consider any evidence stricken from the record by the Court, nor should you take into consideration in making up your verdict any knowledge or information known to you not derived from the evidence given by the witnesses on the witness stand.

Whatever verdict is warranted by the evidence, under the instructions of the Court, you should return, as you have sworn so to do.

EXCEPTIONS TO CHARGE.

Ex. 27.—1. The Court erred in giving to the Jury instruction No. IX as hereinabove set forth, to which ruling the defendant then and there excepted.

Ex. 28.—2. The Court erred in giving to the Jury instruction No. XI as hereinabove set forth, to which ruling the defendant then and there excepted.

29.—3. The Court erred in giving to the Jury instruction No. XII as hereinabove set forth, to which ruling the defendant then and there excepted.

30.—4. The Court erred in giving to the Jury instruction No. XIII as hereinabove set forth, to which ruling the defendant then and there excepted.

31.—5. The Court erred in giving to the Jury instruction No. XIV as hereinabove set forth, to which ruling the defendant then and there excepted.

32.—6. The Court erred in giving to the Jury instruction No. XV as hereinabove set forth, to which ruling the defendant then and there excepted.

33.—7. The Court erred in giving to the Jury that part of instruction No. XVI reading as follows:

"Provided that you further find that the plaintiff had previous knowledge of the fraudulent intent of said Vlik & Company." To which the defendant then and there excepted.

34.—8. The Court erred in giving to the Jury that part of instruction XIX reading as follows: "And if you also find that the plaintiff had previous knowledge of the fraudulent intent of Vlik & Company." To which the defendant then and there excepted.

35.—9. The Court erred in giving to the Jury instruction No. XX as hereinabove set forth, to which ruling the defendant then and there excepted.

Settled and allowed within the time prescribed by law.

F. E. FULLER,
Judge.

Thereupon the case was submitted to the jury, who retired for deliberation, and thereafter returned their verdict, which was in the words and figures following:

[Title of Court and Cause.]

Verdict.

We, the jury duly empaneled and sworn to try the issues in the above entitled cause, find the issues for the plaintiff, and assess the damages to be the sum of thirteen hundred and twenty five dollars $1325.00.

Dated at Fairbanks, Alaska, this 29 day of April, 1913.

FOREMAN
H. E. StGeorge.

Entered in Court Journal No. 12, page 53.

(Indorsed: Filed in the District Court, Territory of Alaska, 4th Div., Apr. 29, 1913. C. C. Page, Clerk.)

Thereupon, and within the time allowed by law, the defendant duly served and filed his motion for a new trial herein, which was in the words and figures following:

[Title of Court and Cause.]

Motion for a New Trial.

Now comes the defendant in the above entitled action and moves for an order setting aside the verdict of the jury, returned and filed in this action, on the twenty ninth day of April, A. D. one thousand nine hundred thirteen, and that a new trial of said action be granted on the following grounds, to wit:

(1) Insufficiency of the evidence to justify the verdict and that the same is against law;

(2) Errors in law occurring at the trial and excepted to by the defendant.

This motion will be made on the pleadings, the verdict and records of this Court in this action, and the testimony adduced at the trial, as it appears from the stenographer's notes, and the defendant will rely on all exceptions taken by him to the rulings of the Court made during the progress of the trial, as it appears from said stenographer's notes, and also on the exceptions taken to the Court's rulings in refusing to charge the jury as requested by the defendant, as well as the exceptions made to the parts of the Court's instructions as given, which excep-

tions as to the rulings of the Court in refusing instructions and as to the portions of its charge more fully appear from the "Request to instruct, Instructions, and Exceptions", served and filed herein.

That the evidence is insufficient to justify the verdict in this that:

(a) The evidence fails to show that the plaintiff was the owner of, or entitled to the possession of the wood, as alleged in plaintiff's complaint;

(b) The evidence shows that the alleged bill of sale, under which the plaintiff claimed, was a fraudulent transfer, made for the purpose of hindering, delaying, and defrauding creditors, and was, therefore, ineffectual as against defendant;

(c) The evidence shows that the defendant was in the actual possession of the wood alleged in the complaint, under due and valid process of law, and retained possession thereof from a date prior to the date of the alleged bill of sale above mentioned to plaintiff, and continuously held possession thereof until the same was sold under said process;

(d) The evidence shows that the plaintiff never either actually or constructively entered into possession of the wood alleged in the complaint, but on the contrary the possession thereof was held adversely to him by the defendant at all times from the intial levy thereon, prior to the execution of said alleged bill of sale, until said wood was sold under due process of law;

(e) The evidence shows that the alleged bill of sale held by plaintiff was without valuable considera-

tion, or other consideration; that the same was not made in good faith, but was fraudulent as against defendant and the existing creditors of Sam Vlik & Co.;

(f) The evidence shows that Paul Ringseth and Jack McLean were, bona fide, existing creditors of Sam Vlik & Co., long prior to the execution of the alleged bill of sale relied on by plaintiff, and that the same was executed by Sam Vlik & Co. to plaintiff with intent to hinder, delay, and defraud them in the collection of their debts;

(g) The evidence shows that the verdict given by the jury in this case was rendered by said jury under the influence of passion and prejudice; was and is contrary to the evidence introduced in said cause; and is contrary to law.

Dated at Fairbanks, Alaska, this second day of May, A. D. one thousand nine hundred thirteen.

McGOWAN & CLARK,
Attorneys for Defendant.

(Indorsed: Filed in the District Court, Territory of Alaska, 4th Div., May 2, 1913. C. C. Page, Clerk. By H. C. Green, Deputy.)

Due service hereof admitted this May 2, 1913.

H. A. DAY, M. E. STEVENS,
Attorney for Plff.

Thereupon the motion for a new trial came on regularly to be heard before the Court and on the 24th day of May 1913 the Court overruled said motion for a new trial, as more fully appears by the or-

der of said Court, which is as follows:

[Title of Court and Cause.]

Order Overruling Motion for New Trial.

This cause coming on regularly to be heard on this 24th day of May, 1913, on the defendants motion to set aside the verdict heretofore rendered herein and grant to said defendant a new trial of the issues in this case;

After hearing the argument of counsel and being fully advised in the premises, it is ordered by the Court that said motion be and the same is hereby denied, to which order defendant excepts and his exception is allowed.

Done in open Court this 24th day of May, 1913.

F. E. FULLER,

Judge.

Entered in Court Journal No. 12, page 603.

(Indorsed: Filed in the District Court, Territory of Alaska, 4th Div., May 24, 1913. C. C. Page, Clerk. By H. C. Green, Deputy.)

Thereafter and on the 24th day of May 1913 the Court made and entered its judgment on the verdict, which is as follows:

[Title of Court and Cause.]

Judgment on Verdict.

This action came on regularly for trial, the parties appearing by their attorneys Morton E. Stevens and H. A. Day for the plaintiff, and McGowan & Clark for the defendant. A jury of twelve persons was regularly empanelled and sworn to try said action.

Witnesses on the part of the plaintiff and defendant sworn and examined. After hearing the evidence and argument of counsel and instructions of the court the jury retired to consider their verdict and subsequently returned into court with the verdict signed by the foreman, and being aclled answered to their names and say:

"We the jury in this cause find for the plaintiff and assess his damages at Thirteen Hundred and Twenty-Five Dollars $1,325.00)."

Wherefore by virtue of the law and by reason of the premises aforesaid it is ordered, adjudged and decreed that said plaintiff have and recover of and from said defendant the sum of Thirteen Hundred and Twenty-Five Dollars ($1,325.00) and interest thereon at eight per cent. per annum from the date hereof until paid, together with said plaintiff's costs and disbursements incurred in this action, taxed at $.....

On application of the defendant a stay of execution herein for the period of ten days was granted by the Court.

Done in open Court this 24th day of May, 1913.

F. E. FULLER,

Judge.

Entered in Court Journal No. 12, page 602.

(Indorsed: Filed in the District Court, Territory of Alaska, 4th Div., May 24, 1913. C. C. Page, Clerk. By H. C. Green, Deputy.)

And now, in furtherance of justice and that right

may be done, the defendant in the above entitled action, within the time allowed by law and the orders of this Court extending his time within which to prepare, serve, and have settled his bill of exceptions in this cause, herewith presents the foregoing bill of exceptions in the above entitled cause and prays that the same may be settled and signed and allowed by the Judge of this Court, in the manner prescribed by law.

McGOWAN & CLARK
Attorneys for Defendant.

Due service hereof admitted this Oct. 16, 1913.
H. A. DAY, M. E. STEVENS,
Attorney for Plff.

[Title of Court and Cause.]

The defendant having heretofore and within the time allowed by law and the orders extending time made by this Court, duly served and filed his proposed bill of exceptions in the above entitled matter, and plaintiff's time to file amendments thereto having expired on the twenty-seventh day of October, 1913, now, on account of the illness of Morton E. Stevens, Esq., one of plaintiff's counsel, it is consented that said plaintiff may have until and including the fifth day of November, 1913, within which to serve and file his proposed amendments to said bill of exceptions, and that the defendant's time to present, have settled, and file his bill of exceptions be extended for a period of ten days after the service of plaintiff's proposed amendments, and that further or-

ders of this Court in this connection shall not be necessary.

Dated at Fairbanks, Alaska, this 31st day of October, 1913.

H. A. DAY,
Attorney for Plaintiff.
McGOWAN & CLARK,
Attorneys for Defendant.

Order Allowing Bill of Exceptions.

The defendant, by his attorneys Messrs McGowan & Clark, pursuant to notice heretofore duly served on the attorneys for the plaintiff, having, on the 11th day of November 1913, presented the foregoing bill of exceptions for settlement and allowance by the Court, in the manner prescribed by law, Morton E. Stevens, Esq., one of plaintiff's attorneys, appearing at said time, and it appearing to the Court, from the orders heretofore made and entered herein, and the stipulation of the attorneys for the respective parties hereto attached, that said bill of exceptions has been heretofore, and within due time, served on the attorneys for the plaintiff, and that the plaintiff has failed to serve or file any proposed amendments thereto, and that his time to serve and file amendments has expired, and that the foregoing bill of exceptions is true and correct in all particulars, and contains all the material testimony, evidence, and exhibits, and other proofs introduced by the respective parties during the hearing of said cause, and the Court being fully advised in the premises;

It is ordered that the foregoing bill of exceptions be, and the same is, hereby allowed, settled, approved, and signed as the bill of exceptions for use in said cause and is hereby made a part of the record, and that the same shall be the bill of exceptions to be used on appeal or writ of error in the above entitled cause.

It is further ordered that the clerk of this Court shall re-file said bill of exceptions as of this date.

Done in open Court at Fairbanks, Alaska, on this twelfth day of November, A. D. one thousand nine hundred thirteen. F. E. FULLER,
District Judge.

Entered in Court Journal No. 12, page 761.

(Bill of Exceptions Indorsed): Filed in the District Court, Territory of Alaska, 4th Div., Oct. 16, 1913. Angus McBride, Clerk. By C. C. Page, Deputy. Re-filed in the District Court, Territory of Alaska, 4th Div., Nov. 12, 1913. Angus McBride, Clerk.

[Title of Court and Cause.]

Order Relative to Supersedeas and Cost Bond on Writ of Error.

The defendant above named having on this day, in open Court, secured an order for additional time within which to file his bill of exceptions herein, and having announced that he intends to, and will, petition for and prosecute a writ of error from the verdict and judgment in this action made and entered, to the United States Circuit Court of Appeals for the

Ninth Circuit, at San Francisco, State of California, and having moved the Court for an order staying proceedings against the defendant pending the hearing of said writ of error, and that an order be made fixing the amount of the security which defendant shall be required to give and furnish to stay said proceedings and for costs on writ of error, and having asked that, on the giving of such security, all further proceedings in this Court be suspended and stayed until the determination of said writ of error by said United States Circuit Court of Appeals for the Ninth Circuit, and said motion on this day having been granted by the Court,

Now, therefore, it is ordered that, on the defendant above named filing with the Clerk of this Court a good and sufficient bond in the sum of twenty five hundred dollars, to the effect, that if the said defendant and plaintiff in error shall prosecute his said writ of error to effect within the time allowed by law, and shall answer and pay all judgments, damages, and costs, if he shall fail to make good his said plea, then this obligation to be void, otherwise to remain in full force, effect, and virtue, which said bond shall be approved by the Clerk of this Court or any of his deputies, and all further proceedings in this Court in said cause shall be, and they are, hereby suspended and stayed until the determination of said writ of error by the said Circuit Court of Appeals for the Ninth Circuit, at San Francisco, State of California;

It is further ordered that said bond in the sum of twenty five hundred dollars shall operate both as a

supersedeas bond and a bond on writ of error to answer damages and costs, the said amount having been fixed by the Court as sufficient to stay proceedings, for supersedeas, and as bond on writ of error.

Done in open court at Fairbanks, Alaska, this 29th day of May, 1913.

F. E. FULLER,
District Judge.

Entered in Court Journal No. 12, page 646.

Due service hereof admitted this May 29, 1913. H. A. Day, Attorney for Plff. (Indorsed): Filed in the District Court, Territory of Alaska, 4th Div., June 2, 1913. C. C. Page, Clerk. By P. R. Wagner, Deputy.

[Title of Court and Cause.]

Bond.

KNOW ALL MEN BY THESE PRESENTS that we, H. K. Love, as United States Marshal, as principal, and J. D. Reagh and H. B. Parkin, as sureties, all of Fairbanks, Alaska, are held and firmly bound unto Vaso Pavlovich, the plaintiff herein, in the sum of twenty five hundred dollars, lawful money of the United States if America, to be paid to said Vaso Pavlovich, plaintiff aforesaid, for the payment whereof, well and truly to be made, we bind ourselves, our heirs, executors, administrators, and assigns, jointly and severally, firmly by these presents.

Sealed with our seals and dated this sixth day of June, A. D. one thousand nine hundred thirteen.

Whereas lately, at a District Court for the Terri-

tory of Alaska, Fourth Judicial Division, holden at Fairbanks, Alaska, in a suit pending in said Court, between Vaso Pavlovich as plaintiff and H. K. Love as United States Marshal as defendant, a judgment was rendered against said H. K. Love as United States Marshal, for the sum of thirteen hundred twenty five dollars, together with costs in the sum of one hundred eighty three and 50-100 dollars, making a total of fifteen hundred eight dollars fifty cents, and the said defendant having, on the twenty-ninth day of May 1913, obtained an order extending his time within which to prepare, serve, and have settled his bill of exceptions to be used on the writ of error from the verdict and judgment in this cause to the United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, State of California, to and until the 31st day of August 1913, and having, on the same day, announced that he intends to and will petition for and prosecute a writ of error from the verdict and judgment aforesaid to the United States Circuit Court of Appeals for the Ninth Circuit aforesaid, and having applied to the Court for an order fixing the amount of security which defendant shall be required to give and furnish to stay proceedings and for costs on said writ of error, and thereupon the Court having made its order that, on the defendant's filing with the clerk of this Court a good and sufficient bond in the sum of twenty five hundred dollars, to the effect that, if the said defendant and plaintiff in error shall prosecute his said writ of error to effect within the time allowed by law and shall an-

swer and pay all judgments, damages, and costs, if he shall fail to make good his said plea, then said obligation to be void, otherwise to remain in full force, effect, and virtue, also that said bond shall be approved by the clerk of this Court or any of his deputies, and that, on the approval and filing thereof, all further proceedings in this case shall be stayed and suspended until the determination of said writ of error by the said United States Circuit Court of Appeals for the Ninth Circuit, and the Court having further ordered that said bond in the sum of twenty five hundred dollars shall operate both as a supersedeas bond and as a bond on writ of error, and the sum of twenty five hundred dollars having been fixed by the Court as sufficient to stay proceedings and for said supersedeas and cost bond on writ of error;

And whereas the above named defendant intends to prosecute said writ of error to said United States Circuit Court of Appeals for the Ninth Circuit to reverse the verdict and judgment in the above entitled cause;

Now, therefore, the conditions of the foregoing obligation are such that, if the said H. K. Love as United States Marshal, the defendant in the above entitled action, shall prosecute said writ of error to effect and shall answer and pay all damages and costs if he shall fail to make good his said plea on said writ of error, then this obligation shall be void, otherwise to remain in full force, effect, and virtue;

And whereas said defendant on writ of error desires to stay execution in the above entitled cause

pending the determination of said writ of error,

Now, therefore, the further condition of this obligation is such that, if the said H. K. Love as United States Marshal shall prosecute said writ of error to effect and shall answer and pay all damages, costs, and judgments, if he shall fail to make good his said plea, then the foregoing obligation to be void, otherwise to remain in full force, effect, and virtue.

H. K. LOVE,
United States Marshal.
By JOHN B. MATHEWS,
Deputy.
J. D. REAGH,
Surety.
H. B. PARKIN,
Surety.

Territory of Alaska,
Fairbanks Precinct.—ss.

J. D. Reagh and H. B. Parkin, being first duly sworn, each for himself and not one for the other, doth depose and say that he is a resident of Fairbanks Precinct, Territory of Alaska, and is worth the sum of twenty five hundred dollars, to wit, the sum specified as the penalty in the foregoing bond, over and above all his just debts and liabilities, in property not exempt from execution and situate within the Territory of Alaska.

J. D. REAGH.
H. B. PARKIN.

Subscribed and sworn to before me on this sixth day of June, A. D. one thousand nine hundred thir-

teen.

(Seal) RICHARD H. GEOGHEGAN,
Notary Public in and for the Territory of Alaska.
My Commission expires 24 Aug., 1914.

Service admitted of the foregoing bond and it is stipulated that the same is sufficient in form and the sureties thereon are sufficient; also that the same may be approved by the clerk and the Court.

7 June 1913.

H. A. DAY,
One of the Attorneys for Plaintiff.

The within bond is hereby approved as to form and sufficiency of sureties and execution is stayed until the determination of the writ of error herein.

7 June 1913.

(Seal) C. C. PAGE, Clerk,
By H. C. GREEN, Deputy.
F. E. FULLER,
Dist. Judge.

(Indorsed): Filed in the District Court, Territory of Alaska, 4th Div., Jun. 7, 1913. C. C. Page, Clerk. By H. C. Green, Deputy.

[Title of Court and Cause.]

Petition for Writ of Error.

The defendant, feeling himself aggrieved by the judgment of this court, made and entered in the above entitled cause on the 24th day of May, 1913, wherein and whereby the above named court rendered judgment against the defendant for the sum of thirteen hundred and twenty-five dollars ($1325.00), together

with interest thereon from the date of said judgment, until paid, at the rate of eight percent (8 per cent) per annum, together with costs in the sum of one hundred eighty-three and 50-100 dollars ($183.50),

Now come Messrs. McGowan & Clark, attorneys for defendant, and petition this Honorable Court for an order allowing this defendant to prosecute a writ of error to the Honorable United States Circuit Court of Appeals for the Ninth Circuit, San Francisco, California, according to the laws in that behalf made and provided; and

WHEREAS the said defendant desires a stay of execution pending the hearing of said writ of error by the said United States Circuit Court of Appeals for the Ninth Circuit, and has heretofore applied to this court for an order staying proceedings pending said hearing, and this court has granted an order fixing said bond, by virtue of which a bond has heretofore been filed and approved by this court, as more fully appears by the said bond and the approval thereof,

NOW, THEREFORE, this defendant petitions that all further proceedings in this court may be suspended and stayed until the determination of said writ of error by the United States Circuit Court of Appeals for the Ninth Circuit,

And your petitioner will ever pray.

Dated at Fairbanks, Alaska, this January 16th, 1914.

McGOWAN & CLARK,
Attorneys for Defendant.

(Indorsed): Filed in the District Court, Territory of Alaska, 4th Div., Jan. 16, 1914. Angus McBride, Clerk.

[Title of Court and Cause.]

Assignment of Error.

Comes now the defendant, being the plaintiff in error herein, and assigns the following errors as having been committed by the above named court during the trial of the above entitled action, which errors the said defendant and plaintiff in error intends to, and does, rely upon in his writ of error to be prosecuted to the United States Circuit Court of Appeals for the Ninth Circuit:

I.

The Court erred in admitting, over defendant's objection, the testimony of the witness, Vaso Pavlovich, substantially as follows:

(a) Prior to the 18th day of May, 1912, I furnished Sam Vlik & Co. with horsefeed. I paid freight on five tons I paid $80.00 for freight and $362.75 for the feed. I gave Sam Vlik $110.00. **Ex. 1 B of E.**

(b) Sam Vlik & Co. agreed to pay me for this feed and money that I paid. **Ex. 2 B of E.**

(c) I posted four notices of that kind on the wood in dispute in this case. I divided these notices on four corners. I put them up on the 18th of May. **Ex. 3 B of E.**

II.

The Court erred in overruling and denying the defendant's motion for a non-suit and a directed ver-

dict. **Ex. 4 B of E.**

III.

The Court erred in rejecting the evidence of the witness, Paul Ringseth as to his attendance before the Commissioner at Chatanika during the trial of the action of Ringseth vs. Sam Vlok & Co., which was sought to be introduced to show that the Commissioner waited over one hour before entering the judgment in that case, and in sustaining plaintiff's objection to the question:

Q. Did you attend before the Commissioner at Chatanika at the time that the summons was returnable? **Ex. 5 B of E.**

IV.

The Court erred in rejecting the evidence of the witness, Samuel R. Weiss, the Commissioner at Chatanika, as to the time of the rendition of the judgment in the case of Ringseth vs. Vlik & Co., which was sought to be introduced for the purpose of showing that the judgment was not made or entered in said docket until after the hour of 3 p. m. on the 24th day of May, 1912, and that he waited one hour before entering said judgment; and in sustaining the objection of plaintiff that the docket was the best evidence and in refusing to allow said witness to answer the following question:

Q. Referring to case No. 35, Paul Ringseth vs. Sam Vlik & Co., and to page 501 of your docket, to the entry of May 24th, will you kindly state when that entry was made. **Ex. 6 B of E.**

V.

The Court erred in denying defendant's offer to prove the matters set forth in the previous assignment of error and instructing the jury not to consider the offer as testimony in the case. **Ex. 6 B of E.**

VI.

The Court erred in denying the offer in connection with the case of Jack McLean vs. Sam Vlik & Co. wherein defendant offered to prove that the docket entry of judgment in said case was not made or entered in said docket until after the hour of four p. m. of said 24th day of May, 1912, to which offer the plaintiff made the same objection, and thereupon the court denied said offer and instructed the jury to disregard the same. **Ex. 7 B of E.**

VII.

The Court erred in permitting the witness, Peter Vidovich, called in rebuttal, to answer the following questions, over the defendant's objections, to-wit:

(a) "Q. I will ask you to state, Mr. Vidovich, whether at that time and place, and in the presence of you and Mr. Brown and Mr. Day, that Mr. Brown, referring to this matter, stated to you and Mr. Day in substance as follows: That you were talking about this attachment, and that Mr. Brown stated to Judge Day and to you in substance that he, Brown, only attached the 3 or 3½ cords of wood, and that was the small pile; and that was where he, Brown placed his notices of attachment,—on the small pile; and that that small pile was all the wood that he, Brown, attached?" to which question the witness answered "Yes sir." **Ex. 8 B of E.**

(b) "Q. Didn't Mr. Brown say to you, or to Judge Day in your presence at that time, that, when this case came to trial that he would go on the witness stand and swear to that, that only 3½ cords of wood were attached by him?", to which question the witness answered "He did say so." **Ex. 9 B of E.**

VIII.

The Court erred in permitting the witness, H. A. Day, called in rebuttal, to answer the following question, over the objection of defendant, to-wit:

(a) "Q. Mr. Day, you may state to the jury whether or not, on the 19th day of May 1912, you, in company with Mr. Peter Vidovich, went to the United States Marshal's office in Fairbanks, Alaska, and then and there had a conversation with Mr. Carlson, the deputy United States Marshal, concerning the suit and the attachment therein, in the case of Paul Ringseth against Sam Vlik & Co., in the commissioner's court at Chatanika, before Sam Weiss, justice of the peace." to which the witness answered:

"A. Yes, we were there, I wouldn't swear to the date positively, but it was about that time." **Ex. 10 B. of E.**

(b) "Q. Mr. Day, I will ask you whether or not, in the presence of you and Mr. Peter Vidovich only, that Mr. Brown, United States deputy marshal, at that time in your office, some time during the summer on the date which he testified to, when you were talking about this particular case of Paul Ringseth vs. Sam Vlik & Co. and the attachment thereunder sued out in the case before commissioner Weiss of

Chatanika in the Fairbanks Precinct, whether or not Mr. Brown said to you in substance that he, Brown, only attached 3 or 3½ cords of wood under this attachment, and that that was the small pile of wood, and that that was the place,—on the small pile of wood,—where he, Brown, posted the notice of attachment, and that that was all the wood that he, Brown, attached in that suit. I will ask you whether or not that was the substance of what Mr. Brown said to you and Mr. Vidovich at that time and place." to which the witness answered:

"A. He stated substantially that." **Ex. 11 B of E.**

IX.

The Court erred in denying defendant's motion for instructed verdict, which motion was made by defendant after the testimony had closed. **Ex. 12 B of E.**

X.

The Court erred in permitting the case to be submitted to the jury, over the defendant's objection and motion for a directed verdict.

XI.

The Court erred in refusing to instruct the jury as requested by the defendant in the following particulars:

(a) In refusing to give the following part of defendant's requested instruction No. II, as follows:

"or (2) the mortgage provide that the property may remain in the possession of the mortgagor, and be accompanied by an affidavit of all the parties thereto, to the effect that the same is made in good faith, to secure the amount named therein, and without any

design to hinder, delay, or defraud creditors, and be acknowledged and filed in the office of the Recorder of the precinct in which the property is situate, and be indexed in the record of chattel mortgages, and the original thereof retained by the said Recorder for the examination of all persons who may be interested therein." **Ex. 13 B of E.**

(b) In modifying defendant's requested instruction No. III by adding thereto the following words:
"or was prevented from so doing by the possession or acts of the defendant." **Ex. 14 B of E.**

(c) In refusing to give defendant's requested instruction No. IV, which reads as follows:

"I instruct you that, if you find that said alleged bill of sale, offered by the plaintiff in this case, was, in reality, intended as a chattel mortgage, and was not filed and indexed as such in the office of the Recorder, as required by law, then said mortgage is void and of no effect." **Ex. 15 B of E.**

(d) In refusing to give defendant's requested instruction No. VI, which reads as follows:

"I instruct you that, in order for the plaintiff in this action to have acquired possession of the wood in controversy after the entry of the judgments in the cases of Ringseth vs. Vlik & Co., and McLean vs. Vlik & Co., on the 24th day of May 1912, it was necessary for him to take such actual possession thereof as would be notice to the world, and to this defendant in particular, that he was claiming and asserting a claim thereto, and, if you find that the plaintiff did not take such possession, between the

time of the rendition of such judgments on the 24th day of May 1912, and prior to the levy of the execution issued out of the Commissioner's Court at Chatanika, in the cases above mentioned, then the lien of said judgments, acquired by the levy of such executions, is paramount and superior to any possession claimed by the plaintiff in this action, and the United States Marshal had the right to sell the property under the writs of execution in those cases." **Ex. 16 B of E.**

(e) In refusing to give defendant's requested instruction No. VII, which reads as follows:

"You are instructed that, if at the time when the defendant levied the executions above mentioned, on the wood in controversy herein, the plaintiff herein was not in the actual possession of said wood, then the levy on said executions was properly made, and the defendant was entitled to hold said property thereunder. **Ex. 17 B of E.**

(f) In refusing to give that portion of defendant's requested instruction No. VIII, which reads as follows:

"And if you believe, from the evidence in this case, that the alleged bill of sale, offered by the plaintiff, was made by Sam Vlik & Co. to the plaintiff with the understanding that the same was made for the purpose of protecting the plaintiff, as against other creditors of Sam Vlik & Co., then I instruct you that the said transfer was fraudulent as against the plaintiffs in said actions, namely, as against Paul Ringseth and Jack McLean, and if you

so find, then your verdict in this action should be for the defendant." **Ex. 18 B of E.**

(g) In refusing to give defendant's requested instruction No. IX, which reads as follows:

"You are further instructed that every conveyance or assignment in writing, or otherwise, of any interest in lands or things in action, or any rents or profits issuing therefrom, and every charge on lands, goods, or things in action, or on the rents or profits thereof, made by any person with intent to hinder, delay, or defraud creditors, or other persons, of their lawful suits, demands, debts or damages, as against the person so hindered, delayed, or defrauded, is void, and if you find, from the evidence in this case, that Sam Vlik & Co. executed the bill of sale produced by plaintiff in this action with such intent, then your verdict should be for the defendant." .**Ex. 19 B of E.**

(h) In refusing to give defendant's requested instruction No. X, which reads as follows:

"You are further instructed that, if you find, from the evidence in this case, that the defendant was in the lawful possession of the wood in controversy, under and by virtue of the writs of attachments mentioned herein, from the 17th day of May 1912 up to and including the 24th day of May 1912, then, even though the attachment may have expired by operation of law, the possession was that of the defendant until said date, and if the plaintiff did not either enter into possession or take possession of said wood on or before the 25th day of May 1912, when the execution in the case of Ringseth vs. Vlik & Co. was

levied, then the wood in controversy was in the legal possession of the United States Marshal, as alleged in defendant's answer herein." **Ex. 20 B of E.**

(i) In refusing to give defendant's requested instruction No. XI, which reads as follows:

"You are instructed that the judgments in the cases of Ringseth vs. Sam Vlik & Co. and McLean vs. Sam Vlik & Co. are valid judgments for the purposes of this case, and are binding on the plaintiff, and that the executions issued thereunder and said judgments kept in force the attachments in said actions, and the property levied on thereunder was at all times subject to the executions issued in said actions, and the plaintiff in said actions, by virtue of said attachments, had valid liens on the wood in controversy from the 18th day of May 1912 until the time when the said property was sold under the executions issued therein." **Ex. 21 B of E.**

(j) In refusing to give defendant's requested instruction XII, which reads as follows:

"You are instructed that the attachment liens of Ringseth vs. Vlik & Co. and McLean vs. Vlik & Co. were not lost, destroyed, waived, or abandoned by the plaintiff in said actions, by reason of the failure of the Commissioner, in whose Court said actions were pending, to insert in said judgments an order foreclosing said liens, and that the words "Let execution issue" were a sufficient order of foreclosure." **Ex. 22 B of E.**

(k) In modifying defendant's requested instruction No. XIII, by inserting the following words:

"And if you also find that the plaintiff had previous knowledge of the fraudulent intent of Vlik & Co." **Ex. 23 B of E.**

(l) In refusing to give defendant's requested instruction No. XIV, which reads as follows:

"You are instructed that, if you find from the evidence that said alleged bill of sale, given to the plaintiff in this action on the 18th day of May 1912, was in reality a chattel mortgage, and that said plaintiff actually took possession of said property under said chattel mortgage, and actually held possession thereof, when said property was taken under the executions by the defendant in this action, in the case of Ringseth vs. Vlik & Co. and McLean vs. Vlik & Co., you can not, under any circumstances, find a verdict in favor of the plaintiff in this action for a greater sum than the amount of the indebtedness which said alleged mortgage was given to secure; and, if you find the foregoing facts to be true, you can not, under any consideration, find for said plaintiff in a sum greater than the actual market value of the wood so seized by the defendant, as proved by the evidence in this case." **Ex. 24 B of E.**

(m) In refusing to give defendant's requested instruction No. XVI, which reads as follows:

"You are further instructed that the evidence in this case conclusively shows that Paul Ringseth and Jack McLean are judgment creditors of Sam Vlik & Co., and that, if the bill of sale offered by the plaintiff was made for the purpose of hindering and delaying them in the collection of their just debts

and demands, then your verdict must be in favor of the defendant." **Ex. 25 B of E.**

(n) In refusing to give defendant's requested instruction No. XVII, which reads as follows:

"You are instructed that, if you should find, from the evidence, that the possession of the defendant under the attachment liens above referred to was lost by the failure of the defendant to have the attachment foreclosed in the judgments above mentioned, and that thereafter the defendant acquired a valid lien under the executions hereinbefore mentioned, then his possession, so obtained, would be valid, unless the plaintiff had actual possession and control of said personal property." **Ex. 26 B of E.**

to all of which rulings, the defendant excepted.

XII.

The Court erred in instructing the jury in the following particulars:

(a) In instructing the jury as set forth in instruction No. IX, which reads as follows:

"And, if you find from the evidence in this case that the bill of sale offered by the plaintiff was intended as a chattel mortgage, then I instruct you that the said mortgage is void as to prior creditors in good faith for value, unless the plaintiff in the action entered into the actual possession of such property and retained possession thereof, or unless you find that he was prevented from so doing by the possession or acts of the defendant." **Ex. 27 B of E.**

(b) In instructing the jury as set forth in instruction No. XI, which reads as follows:

"You are instructed that where absolute ownership is claimed and only special property in the thing claimed is shown—as would be the case if the plaintiff instead of showing absolute ownership should show a conditional sale, or this bill of sale operated as a chattel mortgage—that that is sufficient to sustain a recovery provided that it also appear that the plaintiff has the right of immediate possession of the property." **Ex. 28 B of E.**

(c) In instructing the jury as set forth in instruction No. XII, which reads as follows:

"You are instructed that property may be sold or mortgaged subject to the lien of an attachment, and the sale or mortgage becomes absolute when the lien of the attachment is removed or lost." **Ex. 29 B of E.**

(d) In instructing the jury as set forth in instruction No. XIII, which reads as follows:

"You are instructed that the judgments given in the Commissioner's Court at Chatanika on May 24, 1912, that have been introduced in evidence in this case, did not contain any order that the property attached theretofore in the actions in which said judgments were given should be sold to satisfy the demands of the plaintiffs in said actions, and that therefore as a matter of law said plaintiffs waived and lost any lien theretofore secured upon the property in question by reason of the attachments theretofore issued in said actions, and that the defendant was not therefore longer entitled to the possession of said property under said writs of attachment, if

you should find that they had been theretofore duly levied." **Ex. 30 B of E.**

(e) In instructing the jury as set forth in instruction No. XIV, which reads as follows:

"And you are further instructed that if you find that the plaintiff had become the owner of said wood and entitled to the immediate possession thereof prior to the date of the levy thereon by the defendant under the writs of execution (evidence of which has been given before you) by reason of the bill of sale to the plaintiff from Sam Vlik & Company, then the defendant was without right to hold such property under such levies, or to sell or dispose of the same." **Ex. 31 B of E.**

(f) In instructing the jury as set forth in instruction No. XV, which reads as follows:

"You are instructed that if you find by a preponderance of evidence that on May 18th, 1912, Sam Vlik & Company was indebted to the plaintiff in the sum of seventeen hundred and twenty dollars, or any other substantial sum, and, that in consideration of such indebtedness, and without intent to hinder, delay or defraud the creditors of said Vlik & Company, or without previous knowledge of such intent on the part of the plaintiff, then executed and delivered to the plaintiff the bill of sale of said property; and, if you further find by a preponderance of evidence that the plaintiff thereupon acquired the right to the immediate possession of said property, and that plaintiff did on or about May 18, or at any time before the levy of the executions herein mentioned, take

possession of said wood, or notify the defendant of his claim of ownership and right of possession thereof, or that the defendant was otherwise notified of such ownership and right of possession, then you are instructed that the levy or attempted levy under such writs of execution was without authority, and that the defendant did not thereby secure any right to hold such wood under such levy, or to sell the same thereunder." **Ex. 32 B of E.**

(g) In giving that part of instruction No. XVI, which reads as follows:

"Provided that you further find that the plaintiff had previous knowledge of the fraudulent intent of said Vlik & Company." **Ex. 33 B of E.**

(h) In giving that part of instruction No. XIX, which reads as follows:

"And if you also find that the plaintiff had previous knowledge of the fraudulent intent of Vlik & Company." **Ex. 34 B of E.**

(i) In instructing the jury as set forth in instruction No. XX, which reads as follows:

"You are instructed that if you find from the evidence that said alleged bill of sale given to plaintiff in this action on the 18th day of May 1912, was in reality a chattel mortgage, and that the plaintiff actually took possession of the property under said chattel mortgage and actually held possession thereof when said property was taken under execution by the defendant in this action in the case of Paul Ringseth vs. Sam Vlik and Company and Jack McLean vs. Sam Vlik & Company, you can not under

such circumstances find a verdict in favor of the plaintiff in this action for a greater sum than the amount which said alleged mortgage was given to secure; and, if you find the foregoing facts to be true, you can not under any circumstances find for the plaintiff in a sum greater than the actual market value of the wood so seized by defendant at the time and place of such seizure as proved by the evidence in this case." **Ex. 35 B of E.**

To the giving of all of which instructions the defendant duly excepted.

McGOWAN & CLARK
Attorneys for Defendant.

(Indorsed): Filed in the District Court, Territory of Alaska, 4th Div., Jan. 16, 1914. Angus McBride, Clerk.

[Title of Court and Cause.]

Order Allowing Writ of Error.

Upon motion of Messrs. McGowan & Clark, attorneys for defendant, and the filing of a petition for writ of error and the assignment of error,

IT IS ORDERED that the writ of error be, and same is, allowed, to have reviewed in the United States Circuit Court of Appeals for the Ninth Circuit, at the City and County of San Francisco, State of California, the judgment heretofore made and entered on the 24th day of May, 1913, and that the amount of the bond on said writ of error be, and the same is, hereby fixed at the sum of two thousand five hundred dollars ($2,500.), pursuant to the order of

this court heretofore made and entered herein and the bond heretofore given herein, to cover supersedeas, costs and damages of defendant in error.

IT IS FURTHER ORDERED that the bond heretofore and on the 7th day of June, 1913, filed herein, for the above amount, shall act and take effect as a supersedeas bond on writ of error.

Done in chambers this 16th day of January, A. D. 1914.

F. E. FULLER,
District Judge.

(Indorsed): Filed in the District Court, Territory of Alaska, 4th Div., Jan. 16, 1914. Angus McBride, Clerk.

[Title of Court and Cause.]

Writ of Error.

UNITED STATES OF AMERICA,
Territory of Alaska.—ss.

The President of the United States of America, to the Hon. Frederic E. Fuller, Judge of the District Court, Territory of Alaska, 4th Judicial Division, GREETING:

Because in the records and proceedings, as in also the rendition of judgment dated May 24, 1913, of a plea which is in said District Court for the Territory of Alaska, 4th Division, before you, between Vaso Pavlovich as plaintiff and H. K. Love, United States Marshal, as defendant, manifest error hath happened, to the great prejudice and damage of said H. K. Love, United States Marshal, defendant as aforesaid, as is

said and appears by his petition herein,

We, being willing that error, if any hath been, shall be duly corrected and speedy justice done to the parties aforesaid in this behalf, do command you that if said judgment be therein given, then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same to the Justices of the United States Circuit Court of Appeals for the Ninth Circuit, in the City and County of San Francisco, State of California, together with this writ, so as to have the same at said place, in said circuit, on the 14th day of February, A. D. 1914, that the records and proceedings aforesaid being inspected, the said United States Circuit Court of Appeals for the Ninth Circuit may cause further to be done therein, to correct those errors what of right, according to the laws and the customs of the United States, should be done.

WITNESS the Hon. Edward D. White, Chief Justice of the United States of America, this 16th day of January, A. D. 1914.

Attest my hand and seal of the District Court, Territory of Alaska, Fourth Division, at the clerk's office at Fairbanks, Alaska, on this 16th day of January, A. D. 1914.

(Seal) ANGUS McBRIDE,
Clerk.

Allowed this 16th day of January, A. D. 1914.

F. E. FULLER,
Judge District Court, Territory of
Alaska, 4th Division.

(Indorsed): Filed in the District Court, Territory of Alaska, 4th Div., Jan. 16, 1914. Angus McBride, Clerk.

[Title of Court and Cause.]

Citation on Writ of Error.

UNITED STATES OF AMERICA,
Territory of Alaska.—ss.

The President of the United States of America, to Vaso Pavlovich and to H. A. Day and M. E. Stevens, Esqs., his attorneys, Greeting:

You are hereby cited and admonished to be and appear at the United States Circuit Court of Appeals, for the Ninth Circuit, to be holden at the City of San Francisco, State of California, within thirty (30) days of this citation, pursuant to writ of error filed in the office of the Clerk of the District Court, Territory of Alaska, Fourth Division, wherein Vaso Pavlovich is defendant in error and H. K. Love, United States Marshal, is plaintiff in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in error in that behalf.

WITNESS the Hon. Edward D. White, Chief Justice of the Supreme Court of the United States of America, on this 16th day of January A. D. 1914, and in the year of our Independence the one hundred and thirty-eighth.

F. E. FULLER,
District Judge, Presiding in and for the District

Court, Territory of Alaska, Fourth Division.

(Indorsed): Filed in the District Court, Territory of Alaska, 4th Div., Jan. 16, 1914. Angus McBride, Clerk.

[Title of Court and Cause.]

Admission of Service.

Service is hereby admitted of the assignment of errors and petition for writ of error this day filed in the above entitled action.

Fairbanks, Alaska, January 16, 1914.

H. A. DAY, MORTON E. STEVENS,

Attorneys for Plaintiff.

Service is also admitted of the order allowing writ of error, writ of error, citation on writ of error, this day filed in the above entitled action, and also of the bond on writ of error etc. heretofore served and filed.

Fairbanks, Alaska, January 16, 1914.

H. A. DAY, MORTON E. STEVENS,

Attorneys for Plaintiff.

(Indorsed): Filed in the District Court, Territory of Alaska, 4th Div., Mar. 24, 1914. Angus McBride, Clerk.

[Title of Court and Cause.]

Designation of Place for Hearing of Writ of Error.

To the Honorable FREDERIC E. FULLER, Judge of the Above-named Court, and to Plaintiff and his attorneys:

Now comes the defendant, the plaintiff in error

in the above entitled action, and, pursuant to the provisions of an act of Congress, giving the designation of the place of hearing appeals for the Ninth Circuit to the plaintiff in error, does hereby designate the City and County of San Francisco, in the State of California, as the place for the hearing of the writ of error in the above entitled action.

McGOWAN & CLARK,
Attorneys for Defendant

Due service hereof admitted this Mar. 24, 1914.

H. A. DAY, MORTON E. STEVENS,
Attorneys for Plff.

Filed in the District Court, Territory of Alaska, 4th Div., Apl. 6, 1913. Angus McBride, Clerk.

[Title of Court and Cause.]

Order Extending Return Day on Citation on Writ of Error.

Upon motion of attorneys for defendant, and it appearing to the satisfaction of the court that it is necessary, owing to the great distance from Fairbanks, Alaska, to San Francisco, California, and the slow and uncertain means of communication between said places, that an order extending the time within which to docket the above entitled cause and to file the record therein with the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit at San Francisco, California, should be made; and the Court being fully advised in the premises and deeming that good cause exists therefor,

IT IS HEREBY ORDERED that the time within

which said defendant (plaintiff in error) shall perfect said cause upon writ of error herein and docket and file the record thereof in said United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California, be, and the same is hereby, enlarged and extended to and including the first day of May, A. D. 1914.

Done in open court this 13th day of February, A. D. 1914.

F. E. FULLER,
District Judge.

Entered in Court Journal No. 12, page 856.

Due service hereof admitted this Feb. 13, 1914. H. A. Day, Morton E. Stevens, Attorneys for Plaintiff.

(Indorsed): Filed in the District Court, Territory of Alaska, 4th Div., Feb. 13, 1914. Angus McBride, Clerk.

[Title of Court and Cause.]

Praecipe for Transcript.

TO THE CLERK OF THE ABOVE ENTITLED COURT:

You will please prepare a transcript of the record in the above entitled cause, to be filed in the office of the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, situate at San Francisco, California, under writ of error heretofore perfected to said Court, and include in said transcript the following papers, to-wit:

1. Amended Complaint,
2. Answer.

3. Third Amended Reply.
4. Bill of Exceptions.
5. Order Relative to Supersedeas and Cost Bond on Writ of Error.
6. Bond.
7. Petition for Writ of Error.
8. Assignment of Error.
9. Order Allowing Writ of Error.
10. Writ of Error.
11. Citation on Writ of Error.
12. Admission of Service.
13. Designation of Place for Hearing on Writ of Error.
14. Order Extending Return Day on Citation on Writ of Error.
15. Praecipe for Transcript.
16. Stipulation Relative to Printing Record.

This transcript is to be prepared as required by law and the orders and rules of this Court and the United States Circuit Court of Appeals for the Ninth Circuit, and is to be printed and certified to by you under and by virtue of the rule of this Court for printing of records on appeal or writ of error, made March 21, 1914, and when so printed and certified is to be filed in the office of the Clerk of said United States Circuit Court of Appeals in San Francisco, California, on or before the first day of May, 1914, pursuant to order of this Court extending the time to file said record.

McGOWAN & CLARK,
Attorneys for Defendant.

Due service of the within Praecipe and receipt of a copy thereof are hereby acknowledged this 10th day of April 1914 and consented that said papers shall constitute the record on writ of error herein.

H. A. DAY & MORTON E. STEVENS,
Attorneys for Defendants in Error.

Filed in the District Court, Territory of Alaska, 4th Div., Apr. 11, 1914. Angus McBride, Clerk.

Clerk's Certificate to Record.

United States of America,
Territory of Alaska,
Fourth Division.—ss.

I, ANGUS McBRIDE, Clerk of the District Court, Territory of Alaska, Fourth Division, do hereby certify that the foregoing, consisting of 167 pages, numbered from 1 to 167, inclusive, constitutes a full, true and correct transcript of the record on writ of error in Cause No. 1785, entitled Vaso Pavlovich, Plaintiff, vs. H. K. Love, United States Marshal, Defendant, wherein H. K. Love, United States Marshal, is Plaintiff in Error, and Vaso Pavlovich is Defendant in Error, and was made pursuant to and in accordance with the praecipe of the Plaintiff in Error, filed in this action and made a part of this transcript, and by virtue of the citation issued in said cause, and is the return thereof in accordance therewith; and I further certify that this transcript of record was printed under and by virtue of and in compliance with a "Rule for Printing Records on Appeal or Writ of Error", made by this Court on the 21st day of March.

1914, and that said transcript of record was indexed by me pursuant to said rule, and that the index thereof, consisting of pages i to iv, is a correct index of said transcript of record; also that the costs of preparing said transcript and this certificate, amounting to sixty-two and 75-100 dollars ($62.75), has been paid to me by counsel for Plaintiff in Error in said action.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said court, this fifteenth day of April, 1914.

(Seal.) ANGUS McBRIDE,
Clerk District Court, Territory
of Alaska, 4th Division.